No. 11282

United States

Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA, for the use of RECONSTRUCTION FINANCE CORPORATION, a Federal Corporation, acting in behalf of DEFENSE PLANT CORPORATION, a Federal Corporation,

Appellant,

vs.

SAM BLOCK,

Appellee.

Transcript of Record

In Two Volumes

VOLUME II

Pages 265 to 551

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Rotary Colorprint, 661 Howard Street, San Francisco

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ROY M. BAUER,

called as a witness by and in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Roy M. Bauer.

Direct Examination

By Mr. Dechter:

Q. What is your business, Mr. Bauer?

A. I am gas supply supervisor of the Southern California Gas Company, Southern Counties Gas Company, and Pacific Lighting Corporation, all of Los Angeles.

Q. How long have you so been employed?

A. I started with predecessor companies a little over 21 years ago.

Q. And in connection with your position, will you please state to the court and jury what your duties are insofar as the handling of gas from its source of supply to dispensing the same?

A. I am in direct charge of all gas dispatching operations of the three corporations and all gas purchase accounting of the Southern California Gas Company. I also handle a great mass of statistical information and consolidated figures for the several companies. [226]

Q. And do your duties embrace the Playa del Ray gas reservoir?

A. In so far as requesting gas storage or requesting withdrawal and keeping track of same.

Q. In other words, you are the one who has

(Testimony of Roy M. Bauer.)

charge of how much gas is injected in the reservoir and how much gas is withdrawn from the Playa del Rey reservoir?

A. Yes, currently. I do not set the policies, but I request the changes to be made from day to day and time to time.

Q. In connection with the use of this gas reservoir as a gas storage project will you please state to the court and jury what the arrangement is for the use of that reservoir for gas storage?

Mr. Weymann: That is objected to as incompetent, irrelevant and immaterial, and having no bearing on the issues in this case; not the slightest bearing on the value of the property taken in this proceedings.

Mr. Dechter: Your Honor, this ties in with the production subsequent to the time the Defense Plant took it over. Mr. Weymann has made the statement that that production might be due to other reasons. I think he has a perfect right to show what those other reasons are to show what that additional cost might be to get that additional oil. if there is such additional oil. We have here the person in charge of these gas [227] operations for the gas company who supplies the gas and withdraws the gas, and who is familiar with the arrangement with the Defense Plant Corporation as to whether they charge the Defense Plant Corporation anything for this gas, or whether there is no charge, or whether they, in turn, pay the Defense Plant Corporation for storing the gas so that the Defense

(Testimony of Roy M. Bauer.)

Plant in addition not only gets what the gas company pays them for storage, but gets this oil and additional gasoline. I think it is material from that standpoint.

The Court: Well, it seems to the court from your statement, Mr. Dechter, that it is anticipatory of something that the government may bring up or may not bring up. This may be admissible upon the rebuttal part of your case, but at present it seems to the court that the objection is good.

Mr. Dechter: Very well.

Q. By Mr. Dechter: Mr. Bauer, I will ask you if based upon your experience there has prevailed in Southern California a condition each winter during the cold weather where there has been a shortage of natural gas to such an extent that it has been necessary to deprive industrial users of natural gas in order to furnish domestic users of natural gas?

A. Yes——

Mr. Weymann: Objected to as incompetent, irrelevant and immaterial, and no proper foundation laid or the question; no bearing on the issues in this case. [228]

The Court: I think the objection is not good except possibly as to the foundation, as to the experience of this witness with this type of demand.

Mr. Dechter: I will be glad to go into the foundation further, your Honor.

Q. By Mr. Dechter: Mr. Bauer, these three companies by whom you are employed, what portion of the total natural gas consumed in Southern California is supplied by them, if you know?

(Testimony of Roy M. Bauer.)

A. In excess of 90 per cent.

The Court: Mr. Dechter, I think it can be shortened by asking Mr. Bauer if he knows approximately the quantity of gas consumed in Southern California in the wintertime. Do you, Mr. Bauer?

The Witness: Yes.

The Court: And over how long a period have you known that?

The Witness: I have been making studies of peak day requirements——

The Court: Of what?

The Witness: Peak day requirements, that is the coldest period of the winter, for at least 8, 10 years.

The Court: When you say "peak," do you mean the peak of your own supply?

The Witness: Supply, yes.

The Court: And that is over 8 to 10 years, you say? [229]

The Witness: Yes, that is one of my duties, to make up reports of the past operations and anticipated coming winter operations.

The Court: Do you know the approximate relative amount of the supply and demand in the various seasons of the year in Southern California?

The Witness: I can give you general figures.

The Court: No, I don't mean for you to give it. I am just asking if you know.

The Witness: Yes, I do know.

The Court: That has been your business to determine those things, hasn't it?

(Testimony of Roy M. Bauer.)

The Witness: That is one of the functions of my work, yes.

The Court: I think the objection should be overruled. You may reframe your question.

Mr. Dechter: I think the question was partially answered, your Honor, but I will reframe it again.

Q. By Mr. Dechter: Mr. Bauer, I will ask you if it isn't a fact that there has prevailed in Southern California during the last 10 years, approximately, during the cold weather in the winter a shortage of natural gas so that it has been necessary to curtail the demands of industrial users of natural gas in order to supply domestic users of natural gas?

The Court: Before you answer that, in the first place, [230] Mr. Dechter, if that is a question of importance it shouldn't be put in the leading form in which you asked the question.

Mr. Weymann, would you like to have any voir dire examination of the witness?

Mr. Weymann: No, I would not, your Honor. I concede his qualifications.

Mr. Dechter: I was trying to shorten it. I didn't ask it as a leading question before.

The Court: This time you did, though.

Mr. Dechter: Yes. I will withdraw the question.

Q. By Mr. Dechter: Will you please state to the court and jury what the general prevailing condition has been during the winter months in Southern California for the last 10 years as to the availability of natural gas to supply both domestic and industrial users of natural gas?

Mr. Weymann: May we have a general excep-

(Testimony of Roy M. Bauer.)

tion to this entire line of questions so it won't be necessary to object?

The Court: You mean objection to it?

Mr. Weymann: Yes, I object to the relevancy of the question.

The Court: Yes. It is overruled. You may answer it.

A. At no time since particularly January, 1937, to my knowledge, has there been an adequate supply for all firm customers, principally domestic and commercial users. All peak days and days of heavy demand there has been a deficiency [231] to take care of—let me say it this way: There has been inadequate supplies to handle the potential demand in this area, necessitating the curtailment on certain days of some classes of surplus industrial users.

Q. By Mr. Dechter: And based upon your experience and knowledge in the gas industry, did there exist prior to September, 1942, a need for an underground gas reservoir where surplus gas might be stored and used during those peak winter days?

A. Yes, as far as I can recall there has been some need of additional supplies on peak days for a number of years.

Q. And are you able to state to the court and jury what advantages, if any, exist in the use of an underground gas reservoir as compared to the use of surface storage?

A. In respect to surface storage as we have it in this area, you withdraw gas during the day light hours when the largest demand occurs and store

(Testimony of Roy M. Bauer.)

gas during the night hours or periods of very low demand, principally after midnight. The capacity of those reservoirs, above ground reservoirs, to deliver in most cases is dependent upon compressor capacity. In the case of underground reservoirs we are able to store during the summer months when the firm demands of domestic and commercial customers are at their lowest period and withdraw during the winter months when more gas is required in this general area. That condition is partially brought about by [232] the fact that most of the gas delivered to Southern California districts is oil well gas or gas produced in conjunction with crude oil, and the gas companies do not own or control such gas, and therefore take what is available after field operations and gasoline plant operation requirements are taken care of, so it is necessary for us to augment in several different ways in order to take care of the firm demands on those days of heavy demand.

The Court: Mr. Bauer, is it or is it not a fact—state whichever it may be—whether you can expect greater pressure in the underground storage or the above-ground storage?

The Witness: Underground storage has the greater pressure.

The Court: Does that or does that not mean that with the same capacity in cubic feet you can get more gas in the underground storage because of the fact that greater pressure may be exerted? Is that correct?

(Testimony of Roy M. Bauer.)

The Witness: That is correct.

Q. By Mr. Dechter: Is there any advantage from a fire safety standpoint on the use of underground storage for gas as compared to surface storage for gas? A. I don't think so.

Q. Is there any advantage in the cost of acquiring gas storage as between surface storage and underground storage [233] for the purpose of storing a like amount of gas in each reservoir?

A. I don't think I am qualified to answer that.

The Court: Anything further, Mr. Dechter?

Mr. Dechter: No, your Honor; but I would like to have Mr. Bauer on call. In other words, he might be excused subject to call on rebuttal, following your Honor's indicated ruling in case it becomes necessary.

The Court: That is a matter you may argue with Mr. Bauer. I don't know whether he will be here where he can be called by telephone or not. You can make that arrangement yourself.

Mr. Weymann: I have no questions.

The Court: You are excused, Mr. Bauer.

Mr. Dechter: At this time, your Honor, the defendant rests.

Mr. Weymann: At this time I would like to offer in evidence Plaintiff's Exhibit 1, which was offered for identification.

The Court: Mr. Dechter, I believe, didn't hear that at all. Mr. Weymann has offered in evidence Plaintiff's Exhibit 1 for identification.

Mr. Weymann: It was offered for identification; I am now offering it in evidence.

The Court: What is that? [234]

Mr. Weymann: I am now offering it in evidence.

The Court: That is right.

Mr. Dechter: No objection.

The Court: It may be so received.

(Whereupon, the document, heretofore marked as Plaintiff's Exhibit No. 1 for identification, was received in evidence.)

PLAINTIFF'S EXHIBIT No. 1

RESOLUTION

Whereas, Defense Plant Corporation, a corporation created pursuant to Section 5(d) of the Reconstruction Finance Corporation Act, as amended, deems it necessary for war purposes to acquire certain lands in the vicinity of Los Angeles, California, (Playa Del Rey Gas Storage Project, Plancor 1406) for use as a storage reservoir for natural gas; and

Whereas, Defense Plant Corporation has been unable to acquire title by purchase to the lands required for said storage reservoir, which lands are fully described in Exhibit "A" attached hereto and made a part hereof; and

Whereas, This Corporation has been requested by Defense Plant Corporation to cause condemnation proceedings to be instituted in the name of the United States pursuant to the provisions of the

act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and Executive Order 9217, issued by the President of the United States on August 7, 1942, by virtue of and pursuant to authority vested in him pursuant to said Public Law 507, 77th Congress, supra;

Whereas, Defense Plant Corporation has agreed to make available the funds necessary to pay the costs of acquiring by condemnation the lands described in said Exhibit "A";

Resolved First, It is necessary for War purposes that the lands described in Exhibit "A" be acquired by condemnation proceedings and in connection therewith that the immediate right to occupy, use and improve such lands be granted.

Resolved Second, The Secretary or Assistant Secretary of this Corporation be and hereby are authorized and directed to request the Attorney General of the United States to cause the necessary proceedings to be instituted for the condemnation of such lands and further, to cause the necessary action to be taken to procure a court order granting immediate right to [50] occupy, use and improve the lands described in Exhibit "A," pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and Executive Order 9217, issued by the President of the United States on August 7, 1942, by virtue of and in pursuance to authority vested in him pursuant to said Public Law 507, 77th Congress, supra.

Resolved Third, That the General Counsel or an Assistant General Counsel of this Corporation is hereby authorized and directed to take all necessary and appropriate action to carry out the instructions and authorizations provided in this resolution.

* * * *

The foregoing resolution was duly adopted by the Board of Directors of Reconstruction Finance Corporation on the 18th day of September, 1942.

[Seal] LEO NIELSON,

Assistant Secretary, Reconstruction Finance Corporation, Plancor 1406.

Mr. Dechter: May I reopen my defense, your Honor, in connection with that offer to offer the amended resolution of the R.F.C. of October 4, 1943, which copy has been furnished to me by Mr. Weymann?

The Court: Yes, you may make the offer.

Mr. Weymann: I have no objection.

The Court: Let it be received and marked as Defendant's Exhibit B.

(Whereupon, the document referred to was marked as Defendant's Exhibit B, and was received in evidence.)

DEFENDANT'S EXHIBIT "B"

AMENDATORY RESOLUTION

Whereas, This Corporation at the request of Defense Plant Corporation, has caused condemnation proceedings to be instituted in the name of the United States for the purpose of obtaining title to certain lands required as a storage reservoir for natural gas (Playa Del Rey Natural Gas Storage Project—Plancor 1406), which lands are described in the Exhibit "A" attached to the Declaration of Taking forwarded to the Department of Justice on October 22, 1942; and

Whereas, Defense Plant Corporation has taken possession of and desires to acquire by condemnation title to certain machinery and equipment located upon said lands and has requested this Corporation to request the Department of Justice to amend the petition filed for the condemnation of said lands so as to include certain machinery and equipment located upon the said land, which machinery and equipment is described in the attached Exhibit "C."

Resolved, That the resolution adopted by the Board of Directors of this Corporation on September 18, 1942, as amended, be and hereby is further amended by adding thereto a Resolved Seventh and Resolved Eighth to read in full as follows:

"Resolved Seventh, That it is necessary and advantageous in carrying out the authority vested in Defense Plant Corporation to acquire by con-

demnation the machinery and equipment described in said Exhibit 'C.'

"Resolved Eighth, That the Secretary or an Assistant Secretary of this Corporation be and hereby is authorized and directed to request the Attorney General of the United States to take such action as may be necessary for the acquisition by condemnation of the machinery and equipment described in said Exhibit 'C.' "

* * * *

The foregoing resolution was duly adopted by the Board of Directors of Reconstruction Finance Corporation on the 4th day of October, 1943.

[Seal] /s/ A. T. HOBSON,
Secretary, Reconstruction Finance Corporation.

The Court: You may proceed.

Mr. Weymann: I now offer as Plaintiff's Exhibit next in order a copy of an oil and gas lease dated November 13, 1934, between W. H. Comstock as receiver of the United States Building and Loan Association of Los Angeles as lessor and H. G. Spangler as lessee, being the master lease in this proceeding from which Mr. Dechter read excerpts yesterday.

Mr. Dechter: Your Honor, I will not object because it is [235] not an original or a certified copy, but I would like the reservation of the right to

make any correction in the event it becomes necessary.

The Court: You may have that privilege.

Mr. Weymann: It is so stipulated.

The Court: Let it be received and marked as Plaintiff's Exhibit 7.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 7, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 7

Paragraphs 17 and 22 of Oil and Gas Lease From W. H. Comstock, as Receiver, as Lessor, to H. G. Spengler, as Lessee, Being Plaintiff's Exhibit 7 in Evidence.

17. On the expiration of this lease, or if sooner terminated, the Lessee shall quietly and peacefully surrender possession of the premises to the Lessor and deliver to him a good and sufficient quit-claim deed and shall, so far as practicable, cover all sump holes and excavations made by it. In case of abandonment of any well by Lessee, if the Lessor desires to retain the same, he may notify the Lessee to that effect and thereupon the Lessee shall leave such casings in the well as the Lessor may require, and the Lessor shall pay to the Lessee 50% of the original cost of such casings on the ground.

22. If the estate of either party hereto is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to the heirs, executors, administra-

tors, successors and assigns, but no change of ownership in the land or in the rentals or royalties shall be binding on the Lessee until after the Lessee has been furnished with written notice of such transfer or assignment, together with a certified copy of the instruments of transfer or assignment.

Mr. Weymann: Mr. Oliver, will you take the stand, please?

GRAYDON OLIVER,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Graydon Oliver.

Direct Examination

By Mr. Weymann:

Q. What is your business or occupation, Mr. Oliver?

A. I am a consulting petroleum engineer.

Q. Do you maintain an office in Los Angeles?

A. Yes, I maintain my headquarters office in Los Angeles with field offices in different sections of the State.

Q. How long have you been so engaged?

A. I have been engaged in private practice for approximately [236] 17 years. I have been con-

(Testimony of Graydon Oliver.)

sidered as a petroleum engineer since my graduation from the University of California in 1917.

Q. Will you kindly state your professional experience and qualifications, briefly?

A. I am considered as a technician in the oil industry. I have been engaged in various types of oil technology covering the production, drilling, valuation, sub-surface engineering, reservoir engineering, and special problem work of one type or another.

Q. Are you a member of any professional societies?

A. I am a member of the American Association of Petroleum Geologists, the American Institute of Mining and Metallurgical Engineers, the American Society of Civil Engineers, the American Petroleum Institute, the California Natural Gasoline Association; maybe some others, I don't know.

Q. Have you been associated with any technical school or institution?

A. Why, I was at one time an instructor in natural gas engineering and liquid petroleum gas engineering in the Extension Division of the University of California.

Q. Have you been employed in and about the valuation of oil producing properties?

A. Yes, I have been engaged in the valuation of oil [237] producing properties ever since entering into private practice, having probably valued several hundred different properties ranging from

(Testimony of Graydon Oliver.)

probably a maximum value of $40,000,000.00 on down. [238]

Q. Will you name some of the firms and corporations by whom you have been employed?

A. During the year 1945 I have been employed by a great many firms in a consulting capacity including the Continental Oil Company, Barnsdall Oil Company, Wilshire Oil Company, Lloyd Corporation, South Basin Oil Company, Union Pacific Railroad Company, Southern California Edison Company, Standard Oil Company of California, Atlas Productions, Incorporated, and probably some 25 or 30 others.

Q. You were requested by the Department of Justice to make a survey and inspection of the subject property, Mr. Oliver? A. I was.

Q. For the purpose of forming an opinion as to the market value of this property as of September 28, 1942? A. I was.

Q. And in that connection will you please tell the court and jury what you did?

A. I was engaged to make a study of the Playa del Rey oil field, particularly the properties acquired by the United States Government and assumed by the Defense Plant Corporation as of September 28, 1942. This investigation included a sub-surface study of the reservoir itself, the valuation of the reserves of oil and gas incidental to the property as a whole and to the wells individually; a study [239] of the physical properties at or on the premises as of September 28, 1942, and to inte-

(Testimony of Graydon Oliver.)

grate these various parts into conclusions as to value as of the effective date of September 28, 1942.

In this study I undertook to establish the recoverable oil incidental to the reservoir as a whole and to the individual wells to forecast the probable return to the lessee and lessor and arrive at a conclusion of values both as to ultimate return and as to fair market value so as to guide the Department of Justice in the settlement of the claims that may be presented to them.

Q. And before forming your opinion, Mr. Oliver, what facts and factors did you take into consideration?

A. I had all the records of drilling completion and production of each and every well in the area from the time of its completion until September 28, 1942; all the sub-surface information, a great deal of the geological information, and a great deal of evidence relative to the cores taken from the individual wells. Much of this information was obtained from the files of the Mining Bureau of the State of California, and much of it from the companies themselves.

Q. And on the basis of your investigation and your experience, have you formed an opinion, first, as to the value of the 10 7/12ths overriding royalty of Mr. Block; and, secondly, as to the value of the 70 per cent leasehold [240] estate?

A. I have.

Q. Will you kindly state what, in your estima-

(Testimony of Graydon Oliver.)

tion, your opinion, is the fair market value of the 10 7/12ths per cent overriding royalty?

A. The record of ownership——

The Court: Oh, no, Mr. Oliver. Pardon the interruption, but if you will pay attention to this question, I think it will be a much simpler answer than the one you are apparently about to give. Read the question, please.

(Question read.)

The Court: That is of September 28, 1942.

Mr. Weymann: Of September 28, 1942.

The Witness: I was just going to explain my answer.

The Court: You don't have to explain it. Just give the amount in dollars first, Mr. Oliver.

The Witness: I arrived at the conclusion that the fair market value as of September 28, 1942, approximated $131.00 royalty per cent.

The Court: What is the total?

The Witness: The 10 7/12ths per cent multiplied by $131.00.

The Court: Will you multiply it there if you have some paper? Here is a piece of paper if you don't have any.

The Witness: Thank you. That would approximate [241] $1,388.00.

Q. By Mr. Weymann: Now, Mr. Oliver, have you anything further to add in explanation of how you arrived at that?

The Court: I think you should ask him about it if you desire him to give his explanation.

(Testimony of Graydon Oliver.)

Mr. Weymann: Then, I will withhold that until I get the other valuation and ask him then.

The Court: Well, use your own judgment, Mr. Weymann.

Mr. Weymann: Thank you.

Q. Have you formed an opinion as to the fair market value of the 70 per cent operators' interest? A. I have.

Q. As of September 28, 1942? A. I have.

Q. Will you state what that valuation is?

A. I have the opinion that the 70 per cent working interest of the Block's Oil Company in the Colly No. 10 well has a probable fair market value as of September 28, 1942, of $5,650.00. This amount is arrived at by the summation of the market value of the oil reserves approximating $3,150.00, and the salvage value of the equipment after paying abandonment cost of $2500.00.

The Court: Will you read the entire answer, Miss Reporter?

(Answer read.) [242]

Q. By Mr. Weymann: Now, Mr. Oliver, will you tell us, please, how you arrived at your opinion of those valuations, the processes which you went through, taking first the operators' interest of 70 per cent?

A. My methods of arriving at the conclusion of value which I have just presented were contained in a letter addressed to Mr. Eugene D. Williams, which is as follows:

"This report is an analytical——"

(Testimony of Graydon Oliver.)

Mr. Dechter: We will object, your Honor, to the use of any report or paper unless a foundation is laid.

Mr. Weymann: Very well.

Q. Mr. Oliver, the papers from which you are reading, will you tell us what those are?

A. They are a report addressed to Mr. Eugene D. Williams, Special Assistant to the Attorney General, United States Department of Justice, Lands Division, 808 Federal Building, Los Angeles 12, California, covering an analytical engineering valuation of the oil reserves and properties incidental to the Block's Oil Company Colly No. 10 well.

Q. Was that report compiled by you?

A. It was.

Q. And does it contain all the data upon which you based your opinion? A. It does.

Mr. Dechter: I think opposing counsel should be permitted [243] to see a document before it is used.

The Court: You have a right to see it.

Mr. Weymann: I am going to offer it in evidence.

Mr. Dechter: May I see it? It is customary to first show it to counsel.

Mr. Weymann: Surely.

The Court: Well, it isn't to be offered in evidence. He is just using it for refreshing his recollection, apparently, to save time. You have a right to see it if you desire.

Mr. Dechter: Yes, I would like to.

(Testimony of Graydon Oliver.)

The Court: Just go over and look at it.

Mr. Weymann: I will let him have a copy of it, if it will save time.

The Court: Mr. Oliver, was that made under your direction or was it made by you?

The Witness: It was made by me.

The Court: You wrote it out yourself?

The Witness: Yes, sir.

The Court: Do you have a copy of it?

The Witness: Yes.

The Court: Just give it to Mr. Dechter and he may sit down there at the desk and look at it.

Mr. Dechter: Yes. It appears to be a mimeographed copy. [244]

Q. By Mr. Weymann: Do you have another copy of that with you, Mr. Oliver?

A. Yes, I do (handing document).

The Court: Well, is that entire instrument with reference to the property in question here, Mr. Oliver?

The Witness: It is, sir.

The Court: Let me see it. I am only asking this to save time. It seems to the court it is rather extensive.

The Witness: It is a valuation of the oil property, sir.

The Court: Mr. Weymann, it seems to the court that this could be shortened if you would ask him what he did, if he will state what he did without going into so much detail.

Mr. Weymann: Well, if the court please, I in-

(Testimony of Graydon Oliver.)

tend to carry him through that because there are many facts and factors of great importance.

The Court: Well, the court will take a recess for a few minutes to give Mr. Dechter time to look it over. There may be no objection to his reading it into the record.

Mr. Weymann: I think that would shorten the time.

The Court: It will shorten the time provided there will be no objection. The court will recess for a few minutes. The jury will bear in mind the admonition of the court.

(Short recess.) [245]

The Court: The jurors are all present and in their places. Is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: You may proceed.

(The last question and answer thereto were read.)

Mr. Dechter: We will object to the use of the report upon the ground that it is not any more than a self-serving document, contains a mass of hearsay testimony, conclusions which are not conclusions of an expert.

The Court: If you object to it, I think your objection is good. There is no reason that the witness should not refer to it if it is necessary for him to refer to any notes which were made by him.

(Testimony of Graydon Oliver.)

Mr. Dechter: I have no objection to his using any notes made by him.

The Court: Yes. But as far as reading is concerned, it is objectionable.

Mr. Weymann: May we have an exception, please.

Q. By Mr. Weymann: Mr. Oliver, in your opinion what facts are necessary for an informed buyer to have in the purchase of a producing property, what facts would he require?

A. He would have to have some form of an estimate of the future production that might be obtained from the property, whether it would be one well or more than one well, the cost of [246] producing that oil during the interval of time that the production was economical, the net return that would accrue to the buyer from the production of the oil after paying the production cost, the year in which that payment might accrue and the present worth of the moneys so paid in any particular year. He would also have to know the conditions surrounding the reservoir from which that oil was obtained. He would have to know the geology surrounding the reservoir and the well itself, whether the well was in good mechanical condition, was capable of continued production during the anticipated years of life; whether the formations themselves would yield that oil to the well, or the formations would be robbed of the oil content by other wells in the immediate vicinity. He would have to know the probable market price of

(Testimony of Graydon Oliver.)

the oil at the time he acquired the property, so that he could judge what his investment might be. He would also have to know the terms of the lease under which he was to operate; if it were an operating property, what terms he would have to live up to, whether there were any drilling obligations. He would have to know the amount of water that the well makes, in order to ascertain whether the oil was gradually declining in oil production and increasing in water production to the point where there would be an exclusion of the oil and 100 per cent production of the water. It is very difficult to sit here and recite to you all of the different conditions that an interested [247] party might have to take into consideration.

The Court: You have made quite a number of them. Did you advise yourself with regard to all those matters as of the 28th day of September, 1942, Mr. Oliver?

The Witness: I did.

The Court: And upon those investigations and your knowledge of the oil business, your knowledge of geology—did you state you are a geologist?

The Witness: I am a petroleum engineer, which geology is a tool to our profession.

The Court: Yes, your knowledge of the science of petroleum engineering, upon all those things, did you base your estimate of the valuation?

The Witness: I took all of those matters into consideration, yes, your Honor.

The Court: Go ahead, Mr. Weymann.

(Testimony of Graydon Oliver.)

Q. By Mr. Weymann: Did you also take into consideration the past history of the well from the time of its completion?

A. Yes, I took into consideration the history of production of the well from the time it was completed in 1935 month by month up to September 28th, 1942.

Q. And do you have the record of the production of that well from the time of its completion up to September 28, 1942? A. I do.

Q. Will you let us have that record of the production of [248] oil, of gas, and of water.

Q. I have that tabulated month by month, year by year, for the net oil produced and the total water produced as shown by the records of the well. I also have it in chart form showing the oil produced, water produced, and gas produced. I will first give you the oil and water month by month in barrels. May, 1935——

Mr. Dechter: If counsel has such a chart, I have no objection to his using it, your Honor.

Mr. Weymann: Very well. It will simplify it.

Q. By Mr. Weymann: Have you such a chart, Mr. Oliver? A. I do.

Q. Let me ask you, Mr. Oliver, was this chart made by you or under your supervision and based upon your examination? A. It was.

Mr. Weymann: Would you like to see this?

Mr. Dechter: I didn't have this in mind. I had in mind the tabulation month by month of production, which I think would be more understandable

(Testimony of Graydon Oliver.)

by the jury. However, I have no objection to this also being used, but I think it would be more clear in giving the number of barrels in dollars and cents month by month. [249]

The Court: What Mr. Dechter had in mind, and I believe what Mr. Oliver was referring to, is that contained beginning on page 10 of this report, Mr. Oliver?

The Witness: Beginning on page 15, your Honor.

The Court: Beginning on page 15?

The Witness: No, on page 16, rather, pages 16, 17, and 18 of my report.

The Court: Now, I think this is what Mr. Dechter had in mind and then when the reference was made to the chart, this chart shows the outline of the rise and fall of the production taken from this record here that you referred to, does it, Mr. Oliver?

The Witness: Yes, sir.

The Court: So it will only be illustrative?

Mr. Weymann: Yes, a graphic illustration.

The Court: But this will be the record itself?

Mr. Weymann: The record itself.

The Court: Now, may we save time and have this referred to or received in evidence? What method would you suggest?

Mr. Dechter: I have no objection to counsel withdrawing those pages and offering them in evidence as the figures that Mr. Oliver used in arriving

(Testimony of Graydon Oliver.)

at his opinion, showing what the past production was.

Mr. Weymann: Well, I accept the offer then.

The Court: What pages, Mr. Oliver?

The Witness: 16, 17 and 18.

The Court: They may be received as Government's Exhibit 8.

(The documents referred to were marked as Plaintiff's Exhibit No. 8, and were received in evidence.)

PLAINTIFF'S EXHIBIT No. 8

SUMMARY OF PRODUCTION, BY MONTHS

BLOCK'S OIL COMPANY, COLLY No. 10 WELL

Showing Net Oil and Total Water, in Barrels

	1935		1936		1937	
Months	Net Oil Barrels	Total Wtr. Barrels	Net Oil Barrels	Total Wtr. Barrels	Net Oil Barrels	Total Wtr. Barrels
January			3229	62	1756	199
February			3631	48	1543	172
March			3599	108	1629	181
April			2917	110	1537	174
May	745	372	2956	141	1452	165
June	47502	—	2013	124	1095	208
July	11254	50	2346	176	1160	220
August	6460	92	2209	243	1566	339
September	5650	57	1823	202	1843	382
October	3411	37	1539	170	1774	358
November	5243	45	1720	191	1663	355
December	3492	86	1806	201	1339	374
	83757		29779		18357	

(Testimony of Graydon Oliver.)

Months	1938 Net Oil Barrels	1938 Total Wtr. Barrels	1939 Net Oil Barrels	1939 Total Wtr. Barrels	1940 Net Oil Barrels	1940 Total Wtr. Barrels
January	1648	478	1192	1015	623	792
February	1447	453	1049	1049	428	545
March	1461	461	1159	1159	478	608
April	1382	486	999	999	632	804
May	1706	675	1046	1046	522	783
June	1536	639	987	987	605	907
July	1287	931	1022	1300	584	896
August	1446	886	1012	1288	793	1189
September	1367	873	927	1180	737	491
October	1187	932	943	1200	860	1290
November	930	760	926	1178	687	1030
December	1372	914	567	721	570	855
	16769		11829		7519	

Months	1941 Net Oil Barrels	1941 Total Wtr. Barrels	1942 Net Oil Barrels	1942 Total Wtr. Barrels	1943 Net Oil Barrels	1943 Total Wtr. Barrels
January	565	848	479	720	822	1717
February	561	841	539	808	603	1824
March	911	1365	600	900	688	2323
April	898	1347	701	1051	836	2189
May	688	1032	491	736	551	2401
June	313	468	630	945	624	2163
July	434	651	632	2528		
August	516	774	405	1620		
Septemeber	417	625	436	1622		
October	563	844	771	1726		
November	306	459	600	1957		
December	442	663	971	1520		
	6614		7255			

(Testimony of Graydon Oliver.)

The Court: Mr. Oliver has given me one of these reports and I just turned it over to Mr. Clifton and he may take those pages out and that will be the exhibit.

Q. By Mr. Weymann: Now, Mr. Oliver, I show you a graphic graph or chart showing the production month to month of the gas, oil and water. Was that made by you and under your supervision?

A. It was.

Mr. Weymann: I want to offer this in evidence, if the court please.

The Court: I believe Mr. Dechter said he had no objection, but it seems to the court that it should be received for illustrative purposes only. It was made from this record?

Mr. Weymann: That is correct.

The Court: It may be so received and marked Plaintiff's Exhibit 9 for illustrative purposes.

(The document referred to was marked as Plaintiff's Exhibit No. 9, and was received in evidence, for illustrative purposes.) [251]

Mr. Weymann: May we put that up here, if the court please?

The Court: Yes; will you assist him, Mr. Welch, please?

Q. By Mr. Weymann: Now, would you mind stepping to the board, Mr. Oliver, and explain to the jury how this chart illustrates the figures which have been set forth in your tabulation which is now in evidence?

(Testimony of Graydon Oliver.)

(Thereupon, the witness approached the blackboard.)

A. This chart was compiled——

Q. Pardon me a moment. I wonder if everyone can see that?

A Juror: We can't see the lines.

Another Juror: Draw it out.

The Witness: This chart was compiled merely to illustrate graphically the history of production of the so-called Block Colly No. 10 well. In black ink has been plotted month by month the net barrels of oil produced by the well. In red ink has been plotted the amount of water in barrels produced by the well. In green ink has been plotted the amount of natural gas in thousands of cubic feet produced by the well along with the oil.

The values are given on the left-hand index and the periods of time starting in 1935 and continuing until about May 19, 1943, are shown. The black line is to illustrate the [252] date of acquisition by the Defense Plant Corporation, representing September 28, 1942.

This curve, the black curve, shows the well having been produced initially at a relatively high rate in barrels per month and gradually declining over a period of time until taken over by the Defense Plant Corporation on September 28, 1942. The water is almost negligible in the initial stages of production of the well, and gradually increases with time until on the date of acquisition, September 28, 1942, the amount of water produced was approxi-

(Testimony of Graydon Oliver.)

mately 80 per cent of the total fluid. The amount of gas shows a relatively high value at the beginning of production and gradually declines to a relatively small amount at the time of acquisition by the Defense Plant Corporation.

This material was later plotted, particularly the oil productions and the relative gas ratios were plotted into what a valuation engineer terms a decline curve, and using this past history of production which has drawn a very definite pattern starting from a relatively high value and extending to a relatively low value have forecasted what the well would probably produce during its future life if continued under identical reservoir conditions as were evident on September 28, 1942.

No consideration, of course, was given to the value [253] subsequent to September 28, 1942, as new reservoir conditions existed which were not contemplated as of the date of acquisition by the operator himself.

Mr. Dechter: We move to strike out that last statement.

Mr. Weymann: It may go out.

The Court: It may go out.

The Witness: From the compilation of this decline curve we then forecasted the amount of oil to be produced by the well over the future period of years. That forecast was given in my report by years. For instance, the total oil produced actually by history in 1941 was 6614 barrels. In 1942, which included approximately three months after

(Testimony of Graydon Oliver.)

repressuring started, the total production was 7,255 barrels.

Mr. Dechter: Pardon me. May I have the last statement read, Miss Reporter?

(Record read.)

Mr. Dechter: We move to strike that statement, your Honor, "after repressuring had been started." No proper foundation has been laid, and on the ground that it is not responsive to the question as to the reasons for his valuation.

Q. By Mr. Weymann: In your opinion, Mr. Oliver, are you familiar with the repressuring program done in the Playa del Rey field? [254]

A. I am.

Q. In your opinion did the repressuring have any effect on the production from that well?

A. Yes, it had some effect on the production subsequent to September 28, 1942, upon the Colly No. 10 well.

Q. Will you please explain to the jury how that effect is accomplished?

A. The Playa del Rey area is an oil field which had originally contained oil and gas. The oil and gas was produced over a period of years until the field on September 28, 1942, was to a large extent depleted, not entirely depleted, but to a large extent depleted. The oil and gas had been removed and the space formerly occupied by that oil and gas had to a large extent been replaced by water.

Certain wells which were originally on the edge of production were maintained producing a mixture

(Testimony of Graydon Oliver.)

of oil and water, the water gradually encroaching on to the oil sands and washing the oil sands. These were known as "stripper wells." [255]

The water table was gradually increasing all around the fringes of the structure. After the injection of gas into the top of the structure, just the same as if you might inject gas into the top of an inverted bowl, the pressure created by the injection of that gas forced some of the oil to go back down the dip so that additional pressures were visible and apparent at the wells on the edge of the structure. Sometimes these pressures were measurable and other times they were not particularly measurable, but in almost all instances where the wells on the fringes of the structure were maintained in production a slight increase in the production was noted. Wells on the top of the structure were used primarily for gas injection. Several wells were used. I have forgotten now the exact number; I have them in my notes; and these wells were not used for the production of oil at all, gas was injected into them and gas was returned out of them, but they being in the gas zone entirely did not produce any oil.

Wells such as the Block No. 10 well never had gas injected into it, it was used primarily as a producing well on the edge of the structure and oil was taken from the well all of the time—I believe has been taken constantly since the gas project started.

The Court: Mr. Oliver, before you go further,

(Testimony of Graydon Oliver.)

I think you should explain, if it is a fact, that there was a connection underground between some of these wells. I don't believe [256] that appears.

The Witness: A reservoir such as the Playa del Rey reservoir was studied by many engineers using the physical logs taken by the drillers at the time of drilling, taking the electrical logs taken at the time of drilling, and the production characteristics of the well. The engineers studied all of these wells and concluded that a certain number of wells in a certain area were pressure-connected because the sands feeding those wells were more or less continuous. Some of the sands were encountered higher structurally than other sands.

The Court: That means there was a subterranean connection between some of these wells and that the pressure exerted at the top of the wells, as you have stated——

The Witness: Top of the structure.

The Court: Top of the structure in the well, that that would find its way into all the other wells which were so connected; is that correct?

The Witness: Yes, that is correct. That is what constitutes a reservoir.

The Court: I think there was a motion to strike and there was some questioning after that, apparently for the purpose of explanation. The court didn't rule upon the motion at the time. Would you like to have the court rule upon it?

Mr. Dechter: I will withdraw the motion, your Honor. [257]

(Testimony of Graydon Oliver.)

Q. By Mr. Weymann: Mr. Oliver, referring to your table of production of oil, gas and water, and the graphic chart representing that production, in your opinion has the conduct of the well from the time of its completion any significance in forecasting the future action, the future activity of that well?

Mr. Dechter: May I have that question?

The Court: Read it, please.

(The question was read.)

The Court: He has already so stated, Mr. Weymann.

Q. By Mr. Weymann: What in your opinion is the effect?

A. I don't quite understand you.

The Court: What he means, I think, Mr. Oliver, is if the normal course continues, what would be the result?

Is that what you have in mind?

Mr. Weymann: Yes.

Mr. Dechter: Your Honor, I am going to object to this line of questioning on the ground it is improper. I think counsel has a right to supplement the witness' declaration of his opinion by asking him to give the reasons on which he bases his opinion, but I don't believe anything else would be proper.

The Court: Yes, I think that is correct, Mr. Weymann. This is more in the nature of cross examination.

(Testimony of Graydon Oliver.)

Mr. Weymann: Very well. I will withdraw the question. [258]

The Court: The witness may be asked to give his reasons, and counsel may, of course, suggest at certain parts of the testimony some phases which may have been left out by the witness.

Q. By Mr. Weymann: Very well, Mr. Oliver, will you give your reasons for arriving at the conclusion as to value for the operating interests?

A. The pattern of decline as shown by the historical record of production of this well up to September 28, 1942 gave the indication as to the probable future productions that could be anticipated from this well over future years. Such a forecast was made and——

Q. By you?

A. By me. And it was estimated that the first year subsequent to September 28, 1942 the well would produce a total of 6400 barrels, the second year 5800 barrels, the third year 5300 barrels, the fourth year 4800 barrels, the fifth year 4400 barrels, the sixth year 4000 barrels, the seventh year 3700 barrels, the eighth year 3500 barrels. This in my opinion, was considered the economic limit of production, and the total amount of barrels for the eight years anticipated that the well would produce economically amounted to 37,900 barrels. The operator's share which was 70 per cent of the total amount of oil produced was taken of the 100 per cent forecasted and which I have just enumerated. [259] This 70 per cent amounted to 26,700 barrels.

(Testimony of Graydon Oliver.)

Now, we had to convert these barrels into money. The posted market price for oil similar to the production as of September 28, 1942 was 77 cents per barrel, which is the posted market price for 19-degree API gravity oil as of May 23, 1941. There has been no change in the posted price subsequent to May, and until September 28, 1942. In our investigation of the entire overall picture at Playa del Rey we found that the oil was being transported from the well to a refinery in the near vicinity and a transportation charge of 5 cents a barrel against that was being made, so that the operator was actually receiving instead of the posted market price of 77 cents a barrel, 72 cents a barrel in most instances. However, in the case of the Block Oil Company we found that his values of oil received at that time by selling to various other people, instead of being 72 cents a barrel approximated 80 cents per barrel, and this price was, accordingly, used.

Multiplying the 80 cents per barrel by the 70 per cent interest which he had gave the first year's income of $3600.00, the second year's income $3280.00, the third year's income $2960.00, the fourth year's income $2720.00, the fifth year's income $2480.00, the sixth year's income $2240.00, the seventh year's income $2,080.00, and the eighth year's income $2,000.00, making a total of $21,360.00 gross return for the oil itself.

In addition, a small amount of revenue was obtained for [260] gas and gasoline incidental to the

(Testimony of Graydon Oliver.)

production of the oil. This was allocated upon a per barrel basis of two and eight-tenths cents per barrel, so that the total for the period of eight years amounted to $760.00; and when added to the $21,360.00 made the total return to the producer for the sale of his 70 per cent of the oil $22,120.00.

Now, the producer by terms of the lease agreement must pay for the production costs of 100 per cent of the oil. These production costs have been accordingly estimated year by year. The first year they approximate $1790.00, the second year $1740.00, the third year $1700.00, the fourth year $1680.00, the fifth year $1670.00, the sixth year $1640.00, the seventh year $1630.00, and the eighth year $1610.00, for a total cost for lifting of $13,460.00 for the eight-year period.

In addition to the lifting costs, the producer must pay for his proportion of the taxes and the dehydration of the wet oil to make it available for sale. Over the eight year period it has been estimated that this amount would approximate $2740.00. Adding this $2740.00 to the $13,460.00 of estimated lifting costs gives a total cost that the producer must pay for the recovery of his 70 per cent of the oil of $15,830.00. Year by year the costs were deducted from the total values so that the gross returns year by year to the operator are as follows: The first year $1540.00, the second year $1290.00, the third year $1030.00, the fourth year $840.00, the fifth [261] year $630.00, the sixth year $430.00, the seventh year $290.00, the eighth year $240.00,

(Testimony of Graydon Oliver.)

making a total for the eight years of operation gross return to the operator of $6290.00.

This has been further reduced by discounting to present worth because a dollar payable eight years hence is not worth a dollar today. These values as just read were, accordingly, discounted with the appropriate discount factor, so that the present worth value of the future returns over the eight-year period are as follows: The first year $1430.00, second year $1110.00, third year $820.00, fourth year $620.00, fifth year $430.00, sixth year $270.00, seventh year $170.00, eighth year $130.00, making a total of $4980.00.

This is the amount of money which if a purchaser were interested in would invest at a reasonable interest rate commensurate with those incidental to the oil industry approximating 7 per cent and he could expect to have returned to him by the operation of the well over the period of time that production was anticipated, and the hazard would be all his, so that he would ultimately get returned to him $6290.00.

Naturally, a purchaser is not interested in trading dollars for merely a nominal interest rate, so any buyer would buy at some value less than the $4980.00 which I have given you, and that will constitute the approximate market value which I have heretofore given you as $3150.00.

Q. By Mr. Weymann: Mr. Oliver, you estimated the worth [262] of the operator's interest at $5650.00. Will you please explain where the

(Testimony of Graydon Oliver.)

difference between the $3150.00 and the $5650.00 is found?

A. In the production of an oil well certain facilities must be utilized. An oil well is drilled and completed at a certain time. At that time production facilities are installed. These facilities include the pipe in the well, the liner, the derrick, the tanks in which the oil is produced into, the pipe lines connecting the well head with the tanks, and as time goes on and the well no longer flows pumps have to be installed with the necessary tubing, pump shoe, rods, and pumping units, and all other facilities that are necessary to the actual production of the oil. [263]

The Court: Was this well pumping on September 28, 1942, or was it flowing spontaneously?

The Witness: It was pumping your Honor. All this pumping equipment had to be used in order to obtain this production, and in the establishment of a value wherein we forecast future productions of oil year by year, it contemplates the continued use of this production equipment until the well is no longer capable of producing oil in commercial quantities. In other words, until the time when the production costs offset the revenue obtained from the sale of the producers share of the oil.

In the case of the Block Oil Company well all these facilities that are considered a part of the personal property of the well had to be maintained on the premises during the period that the anticipated life of the well had been contemplated in

(Testimony of Graydon Oliver.)

these valuation reports. In my particular valuation that period was 8 years. Other valuations may extend that life a year or two longer or a year or two shorter, but whatever the period may be, the production facilities must be maintained until the well is abandoned. When the well is abandoned, then these production facilities may be removed and sold and a certain salvage value obtained therefrom. Sometimes this salvage value is reasonable where the well has only been in operation for a relatively short time. [264]

Mr. Dechter: We will object to any evidence by this witness on salvage value on the ground that no proper foundation has been laid to qualify him as to values of personal property.

The Court: Sustained.

Mr. Weymann: I will qualify him.

Q. Mr. Oliver, in the course of your experience——

The Court: If you are not referring to the chart any further, you may take your seat in the witness chair, Mr. Oliver.

(Thereupon, the witness returned to the witness chair.)

Q. By Mr. Weymann: Mr. Oliver, in the course of your professional experience, have you supervised the production and abandonment of any oil wells?

A. I have.

Q. What length of time?

A. Oh, a continued period of time. We are

(Testimony of Graydon Oliver.)

constantly doing that type of work. I happen to be a partner in the O. H. Drilling Company engaged in the drilling of wells.

Q. About how many wells have you supervised?

A. They vary some from time to time. I really couldn't make an estimate right at the present time as to the number.

Q. Oh, approximately.

A. We probably have 25 to 30 at the present time or [265] something of that sort.

Q. Have you supervised the abandonment of any wells? A. Yes.

Q. And have you had occasion to determine the salvage value of the equipment in the wells that you——

Mr. Dechter: What is that question? Will you read it?

Mr. Weymann: I haven't finished the question.

Mr. Dechter: It is hard for me to hear you, Mr. Weymann.

Q. By Mr. Weymann: Have you had occasion to supervise the abandonment of any wells in the course of your professional experience?

A. I have.

Q. And in such abandonment, have you acquired any knowledge of the salvage value of the equipment so abandoned? A. I have.

Mr. Weymann: I think the witness is qualified to determine the salvage value.

Mr. Dechter: May I examine the witness on voir dire, your Honor?

(Testimony of Graydon Oliver.)

The Court: You may.

Q. By Mr. Dechter: Mr. Oliver, have you ever been in the business of buying and selling used oil well equipment?

A. I have not. Wait a minute, I beg your pardon, Mr. Dechter. I have been in the business of buying used oil [266] well equipment. I bought from your man, Mr. Rush, here just a very short time ago, some used equipment.

Q. In connection with what operation did you have occasion to buy any used oil well equipment?

A. In connection with a well I was drilling up in Rio Vista.

Q. And when was that?

A. It was just a short time ago in this particular instance, last fall, I believe.

Q. Is that a well that you were acting as a petroleum engineer on?

A. It was a well for abandonment.

Q. And you were acting as petroleum engineer on that well? A. Yes.

Q. Did you yourself personally buy this equipment from Mr. Rush? A. I did.

Q. You went down there yourself and picked it up? A. I talked to him on the phone.

Q. Do you have a foreman on the well or a drilling superintendent? A. Oh, yes, surely.

Q. Did he go down and pick out this particular equipment? [267] A. No.

Q. And what kind of equipment was it?

(Testimony of Graydon Oliver.)

A. It so happened it was some 10 and 3/4 inch pipe.

Q. Casing? A. Casing.

Q. And your superintendent advised you that you would need that much casing, or you wanted that much casing sent, and you arranged to have him buy it. Isn't that the fact?

A. No. I arranged to buy it myself in this particular instance.

Q. And that was about how long ago?

A. Oh, last fall some time.

Q. And you paid the O. P. A. ceiling price for it?

A. I don't recall the price I paid for it.

Q. Now, what other personal experience have you had in buying used oil well equipment?

A. Well, I have just bought here within the last few months probably some $30,000 to $40,000 worth of equipment.

Q. For whom?

A. The O. H. Drilling Company.

Q. That is for the purpose of drilling a well?

A. That is right.

Q. Drilling machinery?

A. No, casing, derricks, tubing, sucker rods, pumps, [268] tanks, production facilities, and pipe.

Q. Did you personally buy that equipment?

A. Most of it, yes.

Q. Who bought the rest of it?

A. I issued the orders for it.

Q. My question is did you buy it, not who issued

(Testimony of Graydon Oliver.)

the order for it. Did you go out and shop for it and buy it?

A. Your question is very technical, Mr. Dechter. If I issue an order for an item, I must buy it.

The Court: I don't think you two need argue. Just answer the question as well as you can and if you can't answer it, or don't understand it, just state to the court, Mr. Oliver.

The Witness: Why, yes, I bought it.

Q. By Mr. Dechter: From whom did you buy it?

A. Oh, from many concerns. From Superior Tank Company, Youngstown Steel Company, Howard Supply Company, Petroleum Equipment Company; in fact, they are too numerous to mention.

Q. Did you personally handle those purchases?

A. I did.

Q. You went down and picked the equipment out?

A. No, Mr. Dechter. I called on the telephone and told them what I wanted because I knew the equipment I wanted.

The Court: How long have you been doing that, Mr. [269] Oliver?

The Witness: Oh, for a long period of time.

The Court: Well, how many years would you say?

The Witness: It is hard for me to estimate.

The Court: What is it?

The Witness: It is hard to say. I don't recall.

(Testimony of Graydon Oliver.)

The Court: Well, three years, five years, or——

The Witness: Several years anyway.

The Court: Several years.

Q. By Mr. Dechter: In September of 1942 your business was that of a petroleum engineer, was it not?

A. It still is.

Q. And in September of 1942 and prior thereto had you personally abandoned any wells and sold the equipment therefrom?

A. No. I don't recall of having personally abandoned any wells because that is usually left to the lease superintendent to abandon.

Q. And prior to September of 1942, on how many occasions, over what period of time would you say you had to buy used oil well personal property and equipment?

A. Well, over a period of a great many years. From time to time I have bought considerable quantities of used oil well equipment.

Q. And that was bought in connection with wells that [270] you were acting on as engineer?

A. Yes.

Q. Was it part of your duties as engineer to purchase oil well equipment? A. Yes.

Q. Is that the usual duty of a petroleum engineer? A. No, not necessarily.

The Court: Well, you were also in the drilling business?

The Witness: I have been. I wasn't at that particular time.

(Testimony of Graydon Oliver.)

The Court: Had you been prior to that time?

The Witness: No.

Mr. Dechter: Your Honor, I feel that this witness is not qualified to testify as to values of used oil well equipment. Prior to 1942 his services were that of a petroleum engineer, and even if he had been operating it for himself, it would be that of occasionally buying some equipment, calling up and getting a price and buying it. I don't believe that qualifies a person as an expert.

The Court: I think the objection should be overruled. I believe the witness is qualified. You may answer. Do you have the question in mind?

The Witness: No, I do not, your Honor.

The Court: Read the question.

The Reporter: There is no question pending, your [271] Honor.

Mr. Weymann: I think if the reporter would read the last portion of Mr. Oliver's answer at the time the objection was interposed, we could get the continuity of it.

The Court: I think that would take too much time. If you have any further question, I think you had better ask it.

Q. By Mr. Weymann: Going for the moment to the overriding royalty, Mr. Oliver, will you tell the jury, please, how you arrived at the valuation of that?

A. The overriding royalty upon the Block No. 10 well, according to my records, amounts to a total of 13 1/3 per cent. The value was arrived

(Testimony of Graydon Oliver.)

at in a manner similar to that described for the 70 per cent working interest.

The future production of the well was forecasted year by year. The 13 1/3 per cent barrels were computed of the total forecast yearly production, and the value thereof established at the rate of 82.8 cents per barrel. Reading year by year, these values were as follows for the total 13 1/3 per cent interest: The first year, $700.00; second year, $640.00; third year, $590.00; fourth year, $530.00; fifth year, $490.00; sixth year, $440; seventh year, $410.00; eighth year, $400.00, making a total of $4200.00.

From this was deducted the amount estimated for taxes which the interest owner must pay. In the first year it was [272] estimated at $80.00; in the second year, $70.00; in the third year, $70.00; in the fourth year, $60.00; in the fifth year, $60.00; in the sixth year, $50.00; in the seventh year, $50.00; in the eighth year, $50.00, making a total of $490.00.

Deducting the taxes from the total value for the return of the oil then left the amount to be distributed to the owners of the 13 1/3 per cent interest as follows: First year, $620.00; second year, $570.00; third year, $520.00; fourth year, $470.00; fifth year, $430.00; sixth year, $390.00; seventh year, $360.00; eighth year, $350.00, a total of $3,710.00.

These values were discounted in a like manner to present worth, giving a total present worth value for the 8 years of return of $2,760.00.

(Testimony of Graydon Oliver.)

In this particular instance these interests are somewhat divided and distribution of the royalty is made by Title Insurance & Trust Company to which additional charges are made for the writing of those checks.

Mr. Dechter: We move to strike that last statement upon the ground that it is hearsay, incompetent, and not the best evidence.

Q. By Mr. Weymann: Mr. Oliver, do you know——

Mr. Dechter: I beg your pardon. I made an objection.

Mr. Weymann: I am sorry.

The Court: It may go out. [273]

The Witness: This $2760.00 then is the number of dollars which invested at the present time in the 13 1/3 per cent interest of the Block No. 10 well as an overriding royalty would yield an estimated return of $3710.00 over the period of years of anticipated production.

It is my opinion that a willing buyer would probably pay $1750.00 for this interest, or an average of $131.00 a royalty per cent.

Q. By Mr. Weymann: Mr. Oliver, you have referred to the method you have described in arriving at your valuation as an analytical engineering valuation. Do you know whether or not the method that you have pursued is a commonly accepted and used method of arriving at valuation of oil property in the industry.

Mr. Dechter: To which we object upon the

(Testimony of Graydon Oliver.)

ground that it calls for a conclusion of the witness, no proper foundation laid.

The Court: I think it would require some additional foundation.

Q. By Mr. Weymann: Mr. Oliver, are you familiar with the methods used by engineers in the valuation of oil properties? A. I am.

Q. How many valuations have you had occasion to examine?

A. You mean by other engineers or that I make of my own? [274]

Q. By other engineers?

A. I don't recall. I have examined many, but I can't give you any idea.

Q. Do you know whether or not the properties were bought and sold on the basis of those valuations?

Mr. Dechter: To which we object on the ground that no proper foundation has been laid.

The Court: It is overruled. You may answer it.

A. Yes, the property has been bought and sold upon the basis of an engineer's valuation.

Mr. Dechter: May I have the answer?

(The answer was read.)

Mr. Dechter: I move to strike out the answer on the ground it is not responsive.

The Court: The motion is denied.

Q. By Mr. Weymann: How many instances have come within your observation of that, Mr. Oliver?

(Testimony of Graydon Oliver.)

The Court: Read the question.

(The question was read.)

Mr. Dechter: I don't know what the question refers to, your Honor.

Mr. Weymann: Of the use of the analytical engineering estimate for purchase of property.

The Court: Proceed.

A. I make valuations of properties similar to the one [275] that I have just presented as a regular course of my business, and it is upon the basis of these valuations that properties are bought or sold or valued for tax purposes or for mergers, such as the valuation I made for the Richfield Oil Company and the Rio Grande Company in their merger.

The Court: Will you pardon the interruption? Mr. Weymann, you asked the witness if he was familiar with the common practice of engineers and he stated that he was. Now have you any question to be based on that?

Mr. Weymann: Yes.

Q. Is is the common practice of engineers to make valuations on the basis of which you made this valuation?

A. I believe it is an orthodox method of making a valuation, yes.

Mr. Dechter: We move to strike out the answer, your Honor, as not responsive to the question and being the opinion of the witness. In other words, I think what counsel has been driving at is to see whether there is a generally accepted practice. I have no objection to that being gone into to see if

(Testimony of Graydon Oliver.)

there is; but my idea is that each engineer does it his own way.

The Court: I think in substance he has answered that.

Mr. Weymann: I will ask the question.

Q. By Mr. Weymann: Is there a generally accepted practice of engineers in making valuations?

A. Well, that I can't answer.

The Court: Very well. That ends it, then. Have you anything further, Mr. Weymann?

Mr. Weymann: I have some exhibits that I want to introduce, if the court pleases. If Mr. Dechter will stipulate that I may introduce those photographs he may proceed with the cross examination.

Mr. Dechter: I will be glad to stipulate to anything that you show me that I feel is proper; but I don't know what you are referring to.

Mr. Weymann: I am closing my direct examination, and may I reopen my direct for the purpose of doing that?

The Court: It may be opened for that limited purpose.

Mr. Dechter: I have no objection.

Mr. Weymann: Yes.

The Court: It is almost time for our adjournment. The cross examination will be rather lengthy?

Mr. Dechter: Yes, it will.

The Court: Court will adjourn until tomorrow morning at 10:00 o'clock, and the members of the jury are admonished, as the court has heretofore admonished them at the previous recesses, that they

(Testimony of Graydon Oliver.)

are not to converse among themselves nor suffer themselves to be addressed by any person on any subject connected with the trial, and not to form or express any opinion thereon until the cause is finally submitted to them. [277] You are now excused until tomorrow at 10:00 o'clock.

(Whereupon, at 4:25 o'clock p.m., Thursday, July 26, 1945, an adjournment was taken until 10:00 o'clock a.m., Friday, July 27, 1945.) [278]

Los Angeles, California,

Friday, July 27, 1945. 10:00 a.m.

The Court: The members of the jury are all present. Is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated, your Honor.

Mr. Weymann: If the court please, in reading over the transcript last night, I noted that just before we took a recess Mr. Dechter examined Mr. Oliver on voir dire and we left a question hanging up in the air. I would like permission now to reopen my direct examination for the purpose of asking two questions.

The Court: I think that is the question where I asked you to reframe the question.

Mr. Weymann: The question is on the valuation of the physical equipment.

The Court: You may have that privilege.

GRAYDON OLIVER,

called as a witness by and in behalf of the Plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

Q. By Mr. Weymann: Mr. Oliver, have you formed an opinion [280] as to the value of the physical equipment on the Block's Well No. 10 excluding that equipment which is part of the realty which is the casing in the hole, that is 5300 feet of 7-inch casing and 306 feet of 5¾-inch liner?

Mr. Dechter: To which we will object on the ground that it is incompetent, irrelevant, immaterial, and no proper foundation laid to qualify the witness, and no proper foundation laid as to the date as of which that valuation is given.

Mr. Weymann: As of October 4, 1943.

The Court: The objection is overruled. You may answer.

The Witness: I made an estimate of the probable recovery or salvage value of the equipment——

The Court: Oh, no, Mr. Oliver. You are trying to tell too much in the answer. Read the question, please.

(Question read.)

The Witness: As of October 1943?

The Court: October 4, 1943. Just answer the question yes or no, have you formed an opinion?

The Witness: I could form an opinion, but I have not up to this moment.

(Testimony of Graydon Oliver.)

The Court: Well, was there any substantial difference between the valuation of such property on September 28, 1942, and October 4, 1943?

The Witness: The equipment was approximately one year older and depreciation for that one year must be taken into [281] consideration.

Mr. Dechter: We move to strike the answer as not responsive to the court's question.

The Court: Yes, it may go out.

Q. By Mr. Weymann: Was there any difference in the value of that equipment?

The Court: Any substantial difference in the valuation as of the two dates?

The Witness: No, I wouldn't say there was any substantial difference.

Q. By Mr. Weymann: Then, have you an opinion as to the value of that equipment referred to as of September 28, 1942? A. I do.

Q. And in your opinion the value as of October 1943 would be substantially the same?

A. It would. [282]

Q. And what, then, is your opinion of that value?

A. Considering that the equipment had to be used for an additional eight years for the production of oil——

The Court: Oh, no; please don't give that, Mr. Oliver. That may be brought out at a later time. This calls for an answer as to the amount in dollars. You give your answer in dollars as to what that opinion of value is.

(Testimony of Graydon Oliver.)

The Witness: I believe I have already given that value, your Honor, as $2500.00; but that does not contemplate the recovery of that equipment until some eight years subsequent.

Mr. Dechter: We move to strike out the answer, your Honor. It is not responsive.

The Court: It may go out.

Q. By Mr. Weymann: What is its value, if you have an opinion as of October——

The Court: Mr. Weymann, I would suggest that Mr. Oliver be given time to consider this matter a little further. Apparently he is asked this question without his having considered that he might be asked to give such an opinion, and I think we will save considerable time if he is called at a later time.

Mr. Weymann: I do, your Honor, and may we have permission——

The Court: The Court will give you permission to ask the question at a later time.

Mr. Weymann: Thank you. [283]

The Court: It very frequently happens in such circumstances a witness is in a position where he has to give further consideration, and it becomes a matter of argument with him; he starts in to argue with counsel, and it is understandable.

Mr. Weymann: Very well. That is all for the present, then.

Go ahead, Mr. Dechter.

(Testimony of Graydon Oliver.)

Cross Examination

By Mr. Dechter:

Q. Mr. Oliver, in testifying as to your forecast of what the production will be in the future from this Block Well No. 10, you have employed a discount factor. Will you please explain to the court and jury what that discount factor is?

The Court: Read that question, please.

(The question was read.)

A. A discount factor is a factor applied to moneys to be received a number of years in the future, to reduce said moneys to the present worth value. In other words, if one dollar invested today at 7 per cent interest were allowed to continue with earnings at 7 per cent, accumulative at 6 months or 1-year period, at the end of the first year it would amount to $1.07, at the second year an additional 7 per cent on the principal of $1.07, and so forth, on until the end of the number of years. The discount factor is a reverse of that process. It considers what an amount of money set aside today at a certain interest rate would amount to, $1.00 at a number of years hence.

Q. And what rate of interest did you use in making your calculation?

A. I believe it was 7 per cent; I am not quite sure.

Q. Well, will you please look at your report and see if it isn't a fact that you used 8 per cent? Call-

(Testimony of Graydon Oliver.)

ing your attention to the bottom of page 4—rather, 19.

A. That was the discount factor that applied only to the equipment and not to the reserve oil.

Q. All right. What discount factor did you use on the reserve oil?

A. I believe I said it was 7 per cent.

Q. Have you checked it now and is that still your testimony?

A. No, I haven't checked it.

Q. Well, please check it then. If you will turn to page 12, which is the 13 1/3 per cent operating interest, and the amount is smaller, you show a gross return to the owner for the year 1942 of $620.00, do you not? A. That is correct.

Q. And you show a present worth after the discount of $570.00, do you not?

A. That is correct. [285]

Q. That makes a difference of $50.00 discount. Is that correct? A. That is correct.

Q. Eight per cent of $620.00 would be $49.60, would it not?

A. Undoubtedly it was an 8 per cent discount factor that I used.

Q. Are you sure about that?

A. No, I am not sure because I have not checked my tables.

Q. Please check them and see if I am in error that you used the 8 per cent factor?

A. (Consulting documents): I believe I used an

(Testimony of Graydon Oliver.)

8 per cent discount factor compounded annually instead of semi-annually.

Q. Very well. How long have you employed that discount factor in the making of an appraisal?

A. You mean a discount factor or an 8 per cent discount factor?

Q. How long have you used an 8 per cent discount factor in making valuations or appraisals?

A. Oh, a great number of years, or several years, two or three years, possibly.

Q. Well, don't you know whether you used it for two or three years, five years, ten years or twenty years? [286]

A. No, I can't say, Mr. Dechter, because I have used the discount factor in my valuations over a period of some 17 years, and the discount factor is more or less commensurate with the risk involved to the particular money in which you are investing. Your discount factor is picked out to suit the particular purpose and valuation.

Q. In other words, the discount factor is not used by you for the purpose of indicating what money is worth at the time of the making of the appraisal?

A. What money do you mean is worth? Do you mean bank interest, government interest, or real estate loans or——

Q. I am merely asking you to explain your answer, Mr. Oliver. You said that is what you consider a fair investment return would be. Is that what you said?

(Testimony of Graydon Oliver.)

A. That is correct, commensurate with the risk involved.

Q. All right. Now, have you used a higher return than 8 per cent? A. I have.

Q. When?

A. Not in this particular valuation, but in other valuations I have used a higher risk.

Q. On oil wells? A. On oil wells.

Q. And when did you use a higher valuation?

A. When the risk involved warranted such.

Q. Well, I am asking you now for the period. In other words, you say you have used an 8 per cent discount factor to your distinct memory at least three years, but you can't go back any farther than that. Now, I am asking you during what period of time did you ever use a discount factor greater or less than 8 per cent?

A. Well, that is a very difficult question to answer. I would have to dig out each valuation and find out the conditions of each valuation that I made.

Q. In other words, you figured this type of investment in this type of well deserved a return of 8 per cent? A. Yes, sir, that is correct.

Q. Compounded annually?

A. That is correct.

Q. Now, do you know where a person can invest his money at per cent at the present time in bonds or stocks of any kind?

Mr. Weymann: That question is objected to as entirely immaterial.

(Testimony of Graydon Oliver.)

The Court: I think the objection is good.

Q. By Mr. Dechter: Are you familiar with the fact that the banks are only paying an interest of about one per cent on deposits?

Mr. Weymann: Objected to as incompetent, irrelevant and [288] immaterial.

Mr. Dechter: I think this witness, your Honor, is an expert and he has taken a certain discount factor. We have a right to know whether he has taken into consideration the prevailing interest rates and things of that kind. In other words, what he has done in this case, he has not only taken——

The Court: That is a matter of argument, and I think the objection is good. It is not proper cross examination.

Mr. Dechter: Exception.

Q. By Mr. Dechter: Have you taken into consideration in fixing your valuation the fact that there is a great supply of money available for investment?

Mr. Weymann: That is objected to as entirely too indefinite. Supply of money available for what investment?

Mr. Dechter: Any investment.

Mr. Weymann: I still object to it.

The Court: I think that is assuming something not in evidence.

Mr. Dechter: I think it is something that can almost be taken judicial notice of.

The Court: Then, if it can, you don't have to ask the question.

(Testimony of Graydon Oliver.)

Mr. Dechter: Exception.

Q. If you had made a valuation on this particular well in the year 1941, would you have used the 8 per cent discount [289] factor?

A. I would have to have investigated the conditions surrounding the well at the time before choosing the proper discount factor to be used.

Q. Well, you have done that, haven't you?

A. Not in '41, but in '42.

Q. Well, you have taken the history of this well from the very time it was put on production, haven't you?

A. That is correct, but I based my position as of September 28, 1942.

Q. Mr. Block turned over to you all the information that you wanted as to the history of this well, did he not?

A. I believe that he did, or at least it came through your office.

Q. And what information do you lack that would enable you to answer whether you would have used a different discount factor in 1941 than you did in 1942?

A. Why, I would have to make a restudy of the problem as of that particular time. There is nothing that I lack at the present time except that it would necessitate a restudy on my part of the conditions surrounding the well in 1941.

Q. You would use the same information that was given to you, would you not?

A. Yes, that is correct.

(Testimony of Graydon Oliver.)

Q. In other words, you were also given access to the [290] records of the Division of Oil and Gas which would not have been available to you without the consent of Mr. Block. Is that correct?

Mr. Weymann: That is objected to as being entirely argumentative, if the court please, and being improper cross examination.

The Court: Read the question, please.

(Question read.) [291]

The Court: It is overruled. You may answer it.

A. I had access to the records of the Division of Oil and Gas. I believe that permission was obtained for me by the Department of Justice. I don't know whether it came from Mr. Block's or not.

Q. By Mr. Dechter: If you had made a valuation of this well in 1937, what discount factor would you have used?

Mr. Weymann: Objected to as speculative.

The Court: It is overruled.

Mr. Weymann: Exception.

A. I would have made a study of the conditions of the well as of any effective date in 1937 and used an appropriate discount factor the same way in which I made a study of the conditions of the well on September 28, 1942, and used a discount factor which I considered appropriate.

Q. By Mr. Dechter: Now, will you please, again, explain to the court and jury what you mean when you say you used a discount factor that was appropriate?

(Testimony of Graydon Oliver.)

A. I believe that I have answered that question for you in previous testimony.

Q. If you don't mind I wish you would state it again.

A. Future earnings were discounted to present worth by an appropriate discount factor. This discount factor was selected as being commensurate with interest rates that might be applied to an investment of like risks and conditions. [292]

Q. Well, then, taking into consideration that interest rate, did you consider what the prevailing interest rate in the community was?

A. I undoubtedly did take into consideration interest rates in general, but more particularly interest rates as they apply to the oil industry and to the hazards involved in a producing well.

Q. You did not take into consideration, then, the rate of interest that the average investor would receive if he invested his money at the same time?

A. For a like type of investment, yes; an unlike type of investment, no. I cannot consider an investment in a hazardous operation such as the producing of an oil well commensurate with an investment in a government bond.

Q. Are you familiar with the fact that the Bank of America has been making drilling loans for the drilling of wells at a rate of interest of 3 per cent per annum?

A. No, I am not familiar with that.

Q. And are you familiar with the fact that they

(Testimony of Graydon Oliver.)

are merely looking to the production of the well for the return of their money?

Mr. Weymann: That question, again, is objected to. It is assuming a fact not in evidence.

Mr. Dechter: It is testing the knowledge of the witness, your Honor. [293]

Mr. Weymann: There is no evidence here that they are making such loans.

The Court: Will you gentlemen approach the bench here?

(Discussion at bench off the record.)

The Court: Read the question, Mr. Goldstein.

(Question read.)

The Court: Mr. Dechter, I think the form of that question is objectionable. It is assuming something not in evidence, and I think that you may reframe that question to avoid that defect.

Q. By Mr. Dechter: Are you familiar with the fact——

The Court: No, I wouldn't start out with "Are you familiar with the fact." I think that would be assuming something not in evidence. I think you might ask the witness whether he knows such-and-such a thing is a fact.

Q. By Mr. Dechter: Are you familiar with a tideland permit that was granted about two years ago to Mr. F. A. Fairfield, Mr. Sherman, O. C. Field, which involved the drilling of semi-proven and unproven locations where a corporation was organized and the Bank of America made a loan to that corporation without any personal guarantee of

(Testimony of Graydon Oliver.)

the individuals and looking merely to the production of the well for the return of its loan?

The Witness: Kindly read the question, please.

(The question was read.) [294]

A. The question is very ambiguous, Mr. Dechter. I don't know where the tideland permit is. It could be in Huntington Beach. It could be in Golita——

Q. By Mr. Dechter: In Huntington Beach.

A. No, I am not familiar with it.

Q. In addition, Mr. Oliver. to using the discount factor of 8 per cent compounded annually for the purpose of arriving at a fair return on an investment, you arbitrarily after taking that discount took off a lump sum off the present worth after using that discount factor, did you not?

A. Well, it wasn't arbitrary at all.

Q. Well, you took off an additional sum of money, a lump sum of money?

A. No, I didn't take off an additional lump sum.

Q. Let's be concrete, then, and look at your estimate of reserves on the 13 1/3 per cent gross royalty interest. You show, according to your estimates or forecasts, that the gross return for the 8-year period would be $3710.00, is that right?

The Court: What page is that on, Mr. Dechter?

Mr. Dechter: Page 12, your Honor.

A. That is correct.

Q. By Mr. Dechter: And after applying the discount of 8 per cent compounded annually you showed a present worth of that return to be $2760.00, is that correct? [295]

A. That is correct.

(Testimony of Graydon Oliver.)

Q. And then on top of that you took off approximately $1010.00 to arrive at what you consider a fair market value of $1750.00?

A. I arrived at a fair market value——

Q. Did you take off that amount of money to arrive at your opinion of the fair market value?

A. In effect I did, but actually the method was to take a percentage which, to be exact, was 63.35 per cent of the present worth value, which according to my experience has been the amount that the purchasers are willing to pay for a property for purchase based upon the engineer's present worth value.

Mr. Dechter: Your Honor, we move to strike out the latter portion of that statement as not responsive and argumentative and self-serving.

The Court: The motion is denied. [296]

Q. By Mr. Dechter: In arriving at your valuation, did you take into consideration at all the fact that the production of the well might have been increased during the period?

Mr. Weymann: That is objected to as being too indefinite. During what period?

Mr. Dechter: The period of the forecase of 8 years.

The Court: You may answer.

The Witness: I took into consideration the probability of an increase in production that might have been occasioned by additional deeper drilling or other sands in the structure and the probability that such would not be the case, and the probability

(Testimony of Graydon Oliver.)

of the continuance of the production according to the pattern as the well itself drew in the previous years.

Q. By Mr. Dechter: Are there such methods generally known in the oil industry which when used increase the production of a well from its present zone, eliminating any such deeper zone, that are generally used in the oil industry?

A. There are production techniques that will oftentimes increases well productions, and that was given consideration in this particular well, but the fact that we had some three years prior production records in which undoubtedly a good operator such as Mr. Block would have used, I believe that the records of the well itself reveal that the maximum production was being obtained from the sand. [297]

Q. What are those methods generally employed to increase the production from a well without deepening the well?

A. There are many methods used, depending upon the location of the well, the field in which the well is situated, and depending upon the conditions which the operator considers are reducing the production of that well. For instance, the perforations in the liners may be plugged up, so that can be remedied mechanically. He can either wash out those perforations or make new perforations. There may be a wax problem. There may be an asphaltene problem. There may be a mud problem. He can wash the formations with a mud acid and attempt to clean out the mud. He can wash the pipe

(Testimony of Graydon Oliver.)

with a solvent and attempt to clean out the waxes and asphaltenes.

In fact, it is a particular problem for a particular well, depending upon a situation.

Q. Is there a method known as a gas compressor or a vacuum compressor method for the purpose of increasing production from a well from its present zone? A. Not that I know of, no.

Q. Well, don't you know, Mr. Oliver, that such compressors have been used in Southern California?

A. Not to increase production of wells particularly.

Q. Well, referring to this very same well, don't you know that with the use of a vacuum compressor there was at least ten barrels of oil additional secured each day? [298]

A. I believe that the well was using a compressor at the time it was taken over by the Government on September 28th.

Q. Don't you know, Mr. Oliver, at the time the Government took that well over that that compressor was disconnected and had not been used, and that that is one of the surplus items that the Government returned?

A. I believe that is carried in the inventory, is it not, as part of the property the Government took over?

Q. You are apparently mistaken, Mr. Oliver. If you will consult the inventory, you will find that compressor was returned as surplus and was not hooked up.

(Testimony of Graydon Oliver.)

The Court: Could you save time by helping out on that?

Mr. Dechter: Will you stipulate to that, Mr. Weymann, that the compressor was returned?

The Court: Pardon me, wait just a minute. Would you save time by helping out on that question of fact, or do you know?

Mr. Weymann: I don't know, your Honor.

The Witness: According to the inventory I have, the property taken over was on the well and is shown in my report on page 25.

Q. By Mr. Dechter: Did you examine the well at or about the time the well was taken over?

A. Yes, I examined the well, but not in detail, on or about the time the well was taken over. I examined it in [299] detail about one year later.

Q. And at that time was the compressor connected up at the well and being used?

A. I believe that it was. I don't recall definitely.

Q. That is your best recollection, is it?

A. At the time the well was taken over on September 28th, the inventory included one 16-inch Gaso Pump & Burner Company Vacuum Compressor cylinder operated by a walking beam.

Q. Do you know of your own knowledge, Mr. Oliver, that that well was connected up on the compressor?

A. This was the compressor that was attached to the walking beam.

Q. Will you answer the question yes or no, and then you can explain all you want to?

(Testimony of Graydon Oliver.)

A. I don't know of my own knowledge. I merely assume.

Q. You are guessing at it, is that true?

A. No. I have a record of what was in the well at the time it was taken over.

Q. But you don't have a record that it was being used at that time, do you?

A. No, I have no record.

Q. Now, in arriving at your valuation, did you take into consideration the fact that the production of this well might have been increased by using these methods that you spoke of, to-wit, washing and cleaning out the well, acidizing the well, using a vacuum compressor? [300]

A. Yes, I did.

Q. And from your examination of your records, can you tell us when was the last time this well was ever cleaned out prior to the Defense Plant Corporation taking it over?

A. Well, I do not have those records with me.

Q. As a matter of fact, you know that the well had not been cleaned out or reconditioned for quite some time, do you not?

A. I don't recall, Mr. Dechter, because I do not have the records with me on that.

Q. And if the well had not been cleaned out or reconditioned for a period of two years, in your opinion would you say that there would be a probability of the production being increased by the well being cleaned out and reconditioned?

A. There was a possibility and a probability that a slight increase in production might have been

(Testimony of Graydon Oliver.)

obtained had the well been cleaned out a short time before the date of September 28, 1942.

Q. Now, in arriving at your valuation, did you take into consideration the fact that the price of oil might increase above 80 cents a barrel?

A. No, no consideration was given to an increase in the price of oil above 80 cents a barrel.

Q. You made your valuation when, Mr. Oliver?

A. 1943, I believe it was, or 1944. [301]

Q. This report, this letter is dated July 23, 1945. Had you made an earlier report than that?

A. That is correct.

Q. Do you have that here?

A. I have the figures of it here.

Q. May I see them?

A. Yes (handing document).

Q. Did you make any other report to the United States Attorney's office or to the Defense Plant Corporation other than this letter report dated July 23, 1945?

A. Yes. I have made other reports.

Q. Do you have a copy of those?

A. No, I do not.

Q. Where are they?

A. They are in my office. I have a number of reports.

Q. They are available, are they?

A. Yes, they are available.

Q. Your secretary is here? A. No.

Q. Would it be possible for you to get those before the day is out?

(Testimony of Graydon Oliver.)

A. Well, what specifically would you want? I made reports on practically every property in the——

Q. I am only interested in this property.

A. Well, no, I have made no other reports—yes, I [302] have made another report on May 31, 1944, covering the physical equipment, and I believe I have another report covering the oil reserves.

Q. May I have an opportunity of looking at those, Mr. Oliver?

A. I will have to get the oil reserves with the consent of Mr. Weymann.

Mr. Dechter: Any objection, Mr. Weymann, to my seeing those?

Mr. Weymann: May I see that? No, there is no objection to that. It may be offered in evidence.

Q. By Mr. Dechter: Now, at the time you made this letter report of July 23, 1945, and at the time you made the letter report of May 31, 1944, which is the copy you have just handed me to peruse with the permission of Mr. Weymann, you knew on those dates that the price of oil was 94 cents a barrel for the oil from this well, did you not?

A. I probably did. I probably did not pay any attention to it. That was a subsidy granted by the United States Government. The price of oil in the Playa del Rey field was frozen on May 23, 1941.

Mr. Dechter: I move to strike that answer, your Honor as a conclusion of the witness, and that is absolutely beyond the fact.

The Court: I think it is a proper explanation

(Testimony of Graydon Oliver.)

of his [303] answer. He said no and then gave his explanation.

Q. By Mr. Dechter: Mr. Oliver, how long has there been a general discussion in the community about the fact that the price of oil is too low and inadequate for the oil production in this part of the country?

A. Probably ten years.

Q. And it is a fact, is it not, that it is the general consensus of opinion of the oil operators that the price of oil ought to be higher than it is at the present time if it was not for Government regulations? A. I believe that is correct. [304]

Q. It is a fact, is it not, that in the last war the price of oil went to above $2.00 a barrel, after the last war?

A. Over three dollars and a half a barrel.

Q. And isn't it a fact that the numerous writings by numerous experts writing in trade and financial magazines have predicted that the price of oil after the government regulations are lifted will go to $4.00?

A. I believe that there have been predictions, I don't know the price; but such writers I don't think are adequately advised of the entire oil situation.

Mr. Dechter: We move to strike out the latter part of the answer as not responsive. I merely asked him if there were such articles.

The Court: The last part may go out.

Q. By Mr. Dechter: Isn't it a fact, Mr. Oliver, that in the last two or three years, in order to meet

(Testimony of Graydon Oliver.)

the shortage of oil, the government at its own expense has been paying the cost of transporting oil from Texas to Southern California to be refined here for the purpose of meeting the demand.

Mr. Weymann: I think that is entirely too remote and without the scope of the cross examination, if the court please. We may go on here indefinitely. I think that is entirely too remote. I realize latitude is permitted in cross examination, but that is rather too remote.

Mr. Dechter: I don't see how it is remote, your Honor. [305] It is a present condition that existed at the time that this well was taken over, before and after, and buyers buying these types of interest would take that into consideration just like a man buying wheat in July for delivery in December would pay a certain price hoping that by reason of conditions the price would be higher in December.

The Court: The objection is sustained.

Q. By Mr. Dechter: I will ask you, Mr. Oliver, if it isn't a fact that there have been hearings in Congress concerning the importation of oil from abroad to meet the shortage of oil in this country.

The Court: Can you answer it, Mr. Oliver?

A. Yes, I believe there have.

Q. By Mr. Dechter: And I will ask you if it isn't generally predicted by oil men that it will be necessary to import oil after this war to meet the demand for oil and its by-products.

Mr. Weymann: If the court please, I think under the authorities that all of this examination

(Testimony of Graydon Oliver.)

with respect to the condition or to the general impression of the public or the industry should be confined to the period preceding the taking of this property.

The Court: Well, Mr. Weymann, I think what Mr. Dechter has in mind, it seems to the court, is proper to ascertain what Mr. Oliver, who is an expert, considered in fixing the [306] valuation for the coming eight years, that is, eight years after 1942. I think that is what you had in mind, isn't it?

Mr. Dechter: That is correct, your Honor.

The Court: I think considerable latitude should be allowed on that point, although the court is just about to limit the cross examination on that matter. I think you proceeded quite extensively with it, Mr. Dechter. However, this question may be answered.

Mr. Weymann: May this line of questioning, then, be limited merely for the purpose of testing the expert's knowledge?

The Court: That is the only purpose, so the court considers it, and it is limited to that.

Mr. Weymann: Not for the purpose of establishing market value?

The Court: Well, it couldn't be for the purpose of establishing market value, and the jury are instructed it is not to be received for that purpose, but only testing the knowledge of the witness in making the statements which he has made here as an expert.

You agree with the court in that, do you, Mr. Dechter?

Mr. Dechter: Yes, your Honor. In other words,

(Testimony of Graydon Oliver.)

it is for the purpose of seeing whether the expert has taken into consideration all of the other elements.

The Court: For the purpose of testing the scope of his knowledge? [307]

Mr. Dechter: That's right.

The Court: Read the question, please.

(The question was read.)

The Witness: May I answer that in my own way, your Honor?

The Court: Answer it yes or no, and then you may explain it.

A. The answer is no, generally. There have been some predictions made by some parties to that effect. However, I am fully cognizant of the oil situation in the State of California and the production from the State of California. I have had the occasion to investigate productions and the price schedules over a period of years commencing from 1937 or '38 until 1942 or '43, and during that period of time we found cycles of high prices and cycles of low prices. For instance, 27 gravity oil sold as low as 35 cents a barrel and as high as $1.20 a barrel.

Mr. Dechter: Your Honor, may I interrupt the witness to make a motion to strike on the ground that it isn't responsive to the question? I don't mind an explanation on his answer to the question, but I think this is going quite afield and more or less is an argument on the general issue.

The Court: Well, I think that it would be

(Testimony of Graydon Oliver.)

proper if he made the statement generally as to what oil men know and what they predict, or what they have known; but he is giving his [308] own experience now.

Mr. Dechter: I move to strike that out.

The Court: That particular part may go out.

Mr. Dechter: Thank you.

A. (Continuing): The State of California is capable of producing approximately 900,000 barrels of crude oil daily, and the normal pre-war demand did not exceed 600,000 barrels daily, leaving a surplus, according to today's figures, of approximately 300,000 barrels daily, which means that after the war demand has ceased there will be a surplus of probably that amount, and that again depends upon industry, because since the war we have developed a great many gas fields in Northern California with tremendous reserves which have been estimated are sufficient to supply the gas requirements of the state——

Mr. Dechter: Your Honor, I am going to interrupt again.

The Court: Don't interrupt. Let him finish and then you may move to strike it.

A. (Continuing): ——for a great number of years; and this gas would, in turn, decrease the requirements of oil to be used as fuel oil.

The Court: I think there should be a limitation to your explanation.

Mr. Dechter: I move to strike out the entire

(Testimony of Graydon Oliver.)

answer. It is not an answer to the question as to what the general [309] consensus of oil men is.

The Court: I think that this question is so general in its scope that the answer may stand. The motion is denied. Any further cross examination?

Mr. Dechter: Yes, your Honor.

The Court: The court will limit the cross examination upon that point, Mr. Dechter.

Mr. Dechter: May I ask one question on what the witness has voluntarily testified to? In other words, the demand of 600,000 barrels before the war.

The Court: You may, yes.

Q. By Mr. Dechter: Are you assuming, Mr. Oliver, that the demand which was 600,000 barrels before the war will be the same after the war?

A. I am assuming it will be somewhat similar, yes.

Q. So you have given no consideration to the fact that the population of California has increased, industry has increased, the Navy has increased and its main bases are on the Pacific Coast?

A. I have given consideration to those factors, but I have also given consideration to the factors of the tremendous gas reserves that have been developed in the interim period which will offset, to a large extent, the probable increase in demand of fuel oil.

Q. What did it cost to drill this well, Mr. Oliver, do [310] you know, at the time the well was drilled?

A. I have no idea. I could make an estimate.

(Testimony of Graydon Oliver.)

Q. It was in the neighborhood of $60,000.00, was it not? A. I would imagine so, yes.

Q. And that was in 1935?

A. That is correct.

Q. And what would it have cost to drill this well in September of 1942?

Mr. Weymann: Objected to as incompetent, irrelevant and immaterial, and having no bearing on the issues of value.

Mr. Dechter: It is testing this witness, your Honor, as an expert, testing the value of his opinion to show what this improvement would have cost in September of '42 in relation to what it did cost in '35.

The Court: The objection is sustained.

Q. By Mr. Dechter: Isn't it a fact, Mr. Oliver, that the cost of drilling in the year 1942 was at least 50 per cent higher than in the year 1935?

Mr. Weymann: Objected to as incompetent, irrelevant and immaterial, and having no bearing on the issues in this case.

The Court: I don't think it tests the witness' knowledge as to matters that are material in this case. The objection is sustained.

Q. By Mr. Dechter: Mr. Oliver, I will ask you to look at your decline curve chart and I will ask you if it isn't a [311] fact——

The Court: That is Plaintiff's Exhibit 9.

Mr. Dechter: Thank you, your Honor.

The Court: I think you can find a pointer there somewhere, Mr. Dechter.

(Testimony of Graydon Oliver.)

Q. By Mr. Dechter: I will ask you if it isn't a fact that since about the beginning of the year 1940 the well had reached a period of what is known in oil parlance as settled production?

A. That is correct.

Q. In other words, in the average well during the early life of the well you have what is known as a flush production period, is that correct?

A. That is correct.

Q. And after that flush production is secured there is a very substantial decline in the production of the well?

A. There is a pronounced decline, depending upon the well characteristics.

Q. That pronounced decline usually takes place within the first two or three years of the life of a well, does it not?

A. It may take place within the first two or three years. In the particular well it took some three or four years.

Q. After that period the decline becomes gradual until [312] it almost reaches a parallel line?

A. No, it never reaches a parallel line; it is always a decline.

Q. Well, isn't it a fact that since about September, 1939, the production has run about the same that it ran in 1942?

A. I wouldn't say that at all, no.

Q. Well, looking at your curve, doesn't that so indicate, starting with the year 1940?

A. No. If you take the average of the decline

(Testimony of Graydon Oliver.)

and draw a line through those averages (indicating)——

Q. Why not start it right here (indicating)? It is January 1940, that is what I am talking about, January, 1940.

A. It is rather difficult to take a piece of a well record and put it together with the entire well.

Q. In other words, I am starting with the well in 1940, the beginning of the year 1940. Just point where that begins.

A. The year 1940, the well productions were low for probably some particular reason.

Q. Well just draw a line and show us where there has been a decided curve from the year 1940 to——

A. Yes, I would call it a decided curve, a curve sloping downwards towards the right.

Q. Will you point your ruler to end, say, at July of [313] 1942, and tell the court and jury if there was any perceptible decline during the period between January, 1940, and July, 1942?

A. Well, productions in July, 1942 were a little bit higher than the well production in January of 1940, but they were also considerably lower than they were in March of 1941.

Q. And in March of 1941 they were considerably higher than in January of 1940?

A. That is correct. Those are monthly fluctuations in well production due to mechanical problems of the well itself.

Q. In other words, in August or September of

(Testimony of Graydon Oliver.)

1942 the decline in production might have been due to some mechanical difficulty in the well?

A. It might have been.

Q. Now, I will ask you if it isn't a fact that in the year 1942, and particularly about September of 1942, if a well was down it was sometimes necessary for the well to remain down longer than usual because of the difficulty of getting supplies and replacements and pulling equipment?

A. I believe that could be stated as correct, yes.

Q. And that was due to the great demand for equipment that arose since the war started?

A. I don't believe it is primarily due to equipment as it was due to labor. [314]

Q. And isn't it a fact that it was also due to the great demand for drilling equipment and machinery in drilling wildcat wells?

A. Mr. Dechter, I don't think there was any great demand in 1942. The demand came subsequent to 1942.

Q. At any rate, in the last few years there has been a great attempt to discover new production; isn't that right, Mr. Oliver?

A. Yes, there have been extended attempts to discover new production in all areas of the State of California, particularly since 1944.

The Court: I think the court will take a recess at this time. The jury will bear in mind the admonitions of the court heretofore given and return when called by the bailiff.

(A recess was taken.) [315]

(Testimony of Graydon Oliver.)

The Court: The jurors are all present. Is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

Q. By Mr. Dechter: Mr. Oliver, the Union Oil Company posts what is known as a market price for the Playa del Rey field?

A. Yes, I believe they do.

Q. And isn't it a fact that the posted market price for that field is 94 cents a barrel?

Mr. Weymann: As of what date, Mr. Dechter?

Mr. Dechter: At the present time.

Mr. Weymann: That is objected to as being incompetent, irrelevant, and immaterial, and having no bearing on the value of this property taken as of September 28, 1942.

Mr. Dechter: It is preliminary.

The Court: I think if it is preliminary as to testing the basis of the estimate of the expert and his knowledge——

Mr. Weymann: It is objected to on the further ground that it is based on knowledge acquired subsequent to the date of the acquisition.

The Court: Well, it is substantially the same question involved in the offer, and there is this difference. This is asked definitely for the purpose of testing the knowledge of the witness and upon what he based his estimate. The other [316] is an independent offer. This might be admissible when the other might not be admissible.

Mr. Weymann: Well, it is objected to on the

(Testimony of Graydon Oliver.)

further ground that it is not taking into consideration in arriving at his estimate of future production or of the future value as of September 28, 1942. That is, the knowledge that he acquired subsequently was not available to him or anyone else or any prospective purchaser or the seller on the date the property was taken.

Mr. Dechter: Valuation, your Honor, was made in June of 1945 by this witness and he tried to place a fair market valuation as of September 1942. We have a right to show what elements he considered when he sat down in June of 1945 to arrive at this opinion on what the value was in September of 1942. This is preliminary and I intend to tie it back as to when this posted market price went into effect.

The Court: Well, the court understands the basis of your offer, but still there is a question of great importance——

Mr. Weymann: It goes to the whole question of the elements to be considered in making a valuation.

The Court: It seems to the court that——

Mr. Dechter: Maybe I can get it by reframing the question, your Honor.

The Court: Well, what I was going to say, as I recall it this evidence is already presented in the case, and so there [317] will be no material injury or harm from now bringing it to the attention of the court.

(Testimony of Graydon Oliver.)

Mr. Weymann: I think it was admitted, so far as it was in, subject to objection.

Mr. Dechter: You objected and the court overruled the objection.

The Court: Will you gentlemen approach the bench?

(Thereupon, counsel approached the bench, and a discussion was had out of the hearing of the jury and off the record.)

Mr. Dechter: May I have the question read, Miss Reporter?

(Question read.)

Mr. Dechter: 19 gravity oil as produced from Block's Well No. 10.

The Witness: Well——

The Court: Are you going into it for the purpose agreed upon?

Mr. Dechter: Yes, your Honor. This question is for the purpose of testing the witness' knowledge as an expert.

The Court: And for no other purpose?

Mr. Dechter: For that limited purpose.

The Court: Very well. With that limitation, it may be received.

Mr. Weymann: May the jury be instructed to disregard it for any other purpose? [318]

The Court: The jury are so instructed. This is received for the limited purpose of testing the knowledge of the Government's expert, Mr. Oliver. Now, you may answer the question, Mr. Oliver.

(Testimony of Graydon Oliver.)

The Witness: I have no knowledge of the posted market price for Playa del Rey crude oil as of the present time, as I have had no occasion to refer to that posted market price. The price that I used in my valuation was 80 cents a barrel, which was slightly higher than the posted market price effective as of September 28, 1942.

Mr. Dechter: I move to strike out——

The Court: I think that has been explained, that the posted price was 77 cents per barrel, but due to the fact that Mr. Block was selling it specially he was receiving the higher price, which was 80 cents, and that you fixed your valuation on that basis.

The Witness: That is correct, your Honor. I have a copy here of the posted market prices.

The Court: Never mind. You don't need to go any further, Mr. Oliver, on that point.

Q. By Mr. Dechter: Mr. Oliver, you made your appraisal in June 1935?

The Court: 1945.

Mr. Dechter: 1945. Thank you, your Honor.

Q. Mr. Oliver, you made your appraisal in June of 1945 [319] of Block's well No. 10, and at that time did you not know that the posted market price for oil of 19 gravity in the Playa Del Rey field was 94 cents a barrel?

A. Well, Mr. Dechter, in the valuation——

Q. Just answer yes or no.

The Court: Just answer the question yes or no. Did you know that or not?

(Testimony of Graydon Oliver.)

The Witness: I probably did subconsciously.

Q. By Mr. Dechter: Isn't it a fact that you knew that commencing in the spring of 1943 the posted market price of 19 gravity oil in the Playa del Rey field was 94 cents a barrel?

A. I believe you are misconstruing it slightly. The posted market price for Playa del Rey crude I don't believe has been changed, but there has been a subsidy added to the posted market price.

Mr. Dechter: We move to strike the answer of the witness, your Honor, on the ground that it is a conclusion. If there is a subsidy, it would be based upon some Governmental regulation or law, and we defy the Government to produce such law or regulation.

The Court: Let me hear the question and answer.

(Record read.)

The Court: Your motion is denied.

Q. By Mr. Dechter: Are you familiar with the fact [320] that since about the year 1942 there has been an O. P. A. ceiling price on crude oil as well as on other commodities?

A. Yes. There is an O. P. A. ceiling price on crude oil effective May 23, 1941.

The Court: Now, Mr. Dechter, to serve the purpose of this examination and within the limitation, I think that question should have been as of June 1945, the date that he made his estimate, and if there are any others along that line, I think that should be so designated and limited.

(Testimony of Graydon Oliver.)

Mr. Dechter: Very well.

Q. Now, isn't it a fact, did you or did you not know in June of 1945 when you made this valuation that there was an O. P. A. ceiling price on 19 gravity oil in the Playa del Rey field of 94 cents a barrel?

A. Well, in the first place, I did not make the valuation in June of 1945. I made it some time in 1943 or 1944.

Mr. Dechter: Your Honor, may I ask that this witness be instructed to answer the question and not argue the answer, and that if he wants to explain it, he can then do so?

The Court: Well, now, let me hear the question?

(Question read.)

The Court: I think the witness is in his province, Mr. Dechter, of correcting a mistake which in his mind is a mistake. It is assuming something, according to him, which is not a fact. [321]

Mr. Dechter: I was really trying to follow the court's suggestion.

The Court: I thought he said 1945, but I may have been mistaken just as you were.

Mr. Dechter: Yes.

Q. Now, Mr. Oliver, just to get the record straight, when did you form your opinion as to the value of the Block Well No. 10?

A. About the spring of 1944, I believe.

The Court: I want to say that the court was under a misapprehension as to his testimony. I thought he said in 1945.

(Testimony of Graydon Oliver.)

The Witness: December 6, 1943.

Mr. Weymann: The written report was dated in 1945, but the valuation——

Mr. Dechter: July 23, 1945 was the date of the written report.

Mr. Weymann: Of the report, not of the valuation.

The Court: As I now understand it, Mr. Oliver formed his opinion in the spring of 1944, but that he did not make the report to which reference has been made until some time in June, 1945. [322]

Q. By Mr. Dechter: Now, you testified, Mr. Oliver, that the O. P. A. has placed a ceiling price on crude oil, is that correct?

A. Effective May 23, 1941, I believe.

Q. And do you know what that ceiling price was for 19 gravity oil in the spring of 1943?

A. I took no consideration to the value in 1943; I took it as of the effective date September 28, 1942.

Q. Prior to September of 1942 had you ever bought or sold any wells in the del Rey field?

A. No.

Q. Prior to September, 1942 and going back for a period of five years back to September, 1942, had you bought or sold any wells? A. No.

Q. Since September of 1942 have you bought or sold any oil wells? A. No.

Q. On September, 1942 had you ever made any valuation or appraisal of any well in the del Rey field? A. On September, 1942?

Q. Yes. A. No.

(Testimony of Graydon Oliver.)

Q. This appraisal that you have made for the Government in the spring of 1944 and which is contained in this written [323] report dated July 23, 1945, is that the first engineering appraisal that you have made of any well in the del Rey field?

A. That I cannot recall. I can't answer that question without referring to my record.

Q. You have no recollection of doing any work for any one else besides the government on any property in the del Rey field?

A. It seems to me I did some work for Ed McAdams in that field, but I would have to refer to my records to make sure.

Q. You have no recollection at this time?

A. Not at this moment, because, after all, I run several hundred valuations a year through my office.

Q. When was the first time you ever made any engineering valuation?

A. Oh, probably as early as 1928 or '29.

Q. And in what fields did you make such valuation?

A. I don't recall. I made a valuation of the properties of the Italo Petroleum.

Q. Italo Petroleum Company in what field?

A. Well, they have properties in many fields. I don't recall the field exactly.

Q. Did you ever do any work for them on their lease at Signal Hill? A. Yes. [324]

Q. Are you familiar with the sublease from the

(Testimony of Graydon Oliver.)

Italo Petroleum Company to the Big Four Oil Company?

A. I probably was at the time I made the valuation. I don't recall.

Q. When did you make that valuation?

A. I believe that was about 1928 or '29.

Q. Do you know of your own knowledge that the Big Four Oil Company have four wells that are approximately 7 years old; that the production hasn't varied for the last two or three years?

A. I have no knowledge now of the production records of that well. I will have to take your say-so.

Q. You are familiar with the fact that in Signal Hill most of the wells make a lot of water, are you not?

A. I believe that many of them do.

Q. And some of those wells have been making as much as 80 or 90 per cent water for a period of about 10 years?

Mr. Weymann: Pardon me a moment. I was under the impression that the court limited the scope of cross examination for the purpose of testing this witness' knowledge.

The Court: No; that was as to a particular phase.

Mr. Dechter: Read the question, Mr. Reporter.

(The question was read.)

A. I believe that that statement is fairly correct. I am not sure about it. I know that they have a habit of [325] producing one sand until it is depleted and it probably makes 80 or 90 per cent

(Testimony of Graydon Oliver.)

water, and then they take another sand and produce that for another period of time. So I would have to know the exact conditions surrounding the particular well before I could answer that question truthfully.

Q. It is a fact, is it not, that the mere fact that a well is making a lot of water does not preclude the fact that it may be a profitable producer?

A. I think generally that is a very true statement.

Mr. Dechter: May I have the answer, please? I didn't hear it.

(The answer was read.)

Q. By Mr. Dechter: I will show you, Mr. Oliver, a statement of oil, gas and natural gasoline produced from the Defense Plant Corporation Well No. 10 at Playa del Rey, formerly Block Oil Company No. 10, being Defendant's Exhibit No. A, for identification, and I will ask you if you took into consideration the fact that said well since it was taken over by the government has in the period from September 29, 1942 to June, 1945 produced approximately $23,500.00.

The Court: Mr. Dechter——

Mr. Weymann: I assign that as misconduct of counsel. Counsel has stipulated and agreed with the court that this would be withheld until the court rules on it.

Mr. Dechter: I take exception to that. I made no [326] stipulation or exception.

Mr. Weymann: The court withheld its ruling.

(Testimony of Graydon Oliver.)

The Court: In any event, I think it is improper to ask a question concerning an exhibit which has only been marked for identification, Mr. Dechter.

Mr. Weymann: May the jury be instructed to disregard both the question and the exhibit?

Mr. Dechter: At this time, your Honor, I wish to renew my offer.

The Court: Let the court rule upon the request, Mr. Dechter.

The jury are ordered to disregard the question and to draw no inference whatsoever from the asking of it.

Now you may proceed.

Mr. Dechter: At this time I wish to renew my offer in evidence of Defendant's Exhibit A heretofore marked for identification.

Mr. Weymann: Objected to as incompetent, irrelevant and immaterial, and having no bearing whatsoever on the value of this property as of September 28, 1942.

The Court: I think that the objection is good. And it is not proper cross examination of this witness' testimony.

Mr. Dechter: Your Honor indicated that his previous ruling was merely an interim ruling.

The Court: That is true, and you have the right to offer [327] it.

Mr. Dechter: I at this time would like to renew my offer, so I may have an opportunity of using it if it is received.

The Court: The objection is sustained.

Mr. Dechter: Note an exception.

(Testimony of Graydon Oliver.)

Q. By Mr. Dechter: Did you take into consideration in making your valuation and in giving your testimony here as to what the production of this well has been since September, 1942 down to date? A. I did not.

Q. If you had taken that into consideration would you have changed your opinion?

Mr. Weymann: Objected to as being speculative.

The Court: I think it is only argumentative.

Mr. Weymann: Argumentative.

The Court: Sustained.

Q. By Mr. Dechter: Do you recall what life you estimated for the wells at Signal Hill of the Italo Company in 1928? A. No, I do not.

Q. I will ask you if it isn't a fact that wells at Signal Hill have continued to produce for as long as three times beyond the estimated life by petroleum engineers?

Mr. Weymann: Objected to as incompetent, irrelevant and [328] immaterial, no proper foundation laid, no showing that wells in Signal Hill are comparable to wells in Playa del Rey field.

The Court: The objection is overruled.

A. In answering your question, Mr. Dechter——

The Court: First, just answer it yes or no, and then you may explain it.

The Witness: It is a question I cannot answer yes or no to.

The Court: Read the question, please, Mr. Reporter.

(The question was read.)

(Testimony of Graydon Oliver.)

The Court: Well, it apparently calls for a yes or no answer, but the court will permit the witness to answer it in his own way in view of his statement that he cannot answer it yes or no.

A. I have no particular knowledge of what other petroleum engineers have estimated the life of wells at Signal Hill. I have only my own references. Furthermore, the sands at Signal Hill are several thousand feet in thickness, whereas at Playa del Rey they are a maximum two or two hundred fifty feet in thickness. The fields are not comparable at all, and an analogy cannot be drawn between wells at Signal Hill and wells at Playa del Rey. There is no basis for comparison.

The Court: Read that question, Mr. Reporter.

(The question was reread.) [329]

The Court: Well, I think now in view of the witness' answer, that question could have been answered either yes or no, or by merely stating he did not know the answer.

Mr. Dechter: I move to strike out the answer as not responsive.

The Court: It may go out.

Q. By Mr. Dechter: Mr. Oliver, I will ask you if you do not know that there are many wells in Southern California which have produced for a period greater than what the petroleum engineers have estimated their life to be?

Mr. Weymann: That is objected to as being incompetent, irrelevant and immaterial.

The Court: The objection is overruled. I think

(Testimony of Graydon Oliver.)

it is proper to test the knowledge of the witness on the particular fact with which he has presented testimony.

Mr. Weymann: Exception.

Q. By Mr. Dechter: Will you answer the question?

A. I believe that there have been known cases in which wells have continued to produce longer than the estimates previously given to them.

Q. Isn't it a fact, Mr. Oliver, that the opinions of petroleum engineers have been gradually changing in the last 20 years as to the probable life of wells?

By changing, I mean that at first they started out by estimating the life of a well at 18 months, and then three years, and then five years, and then ten years? [330]

A. Developments in reservoir engineering have changed the ideas of petroleum engineers as to the amount of recoverable oil that might be incidental to a certain property or a certain well. I personally was responsible for a great deal of this development in the technique of core analysis in which we were pioneers. In the Playa del Rey area I fortunately have a considerable amount of data upon the volumetric amount of oil actually in the formation, and much of this data was used in the compiling of the decline curve which I made in forecasting these productions.

Q. Well, in summary, your answer is that the opinions of engineers have changed to give greater

(Testimony of Graydon Oliver.)

periods of life to oil wells in Southern California. Isn't that correct? A. Some wells.

Q. Now, in projecting the estimate of reserve, showing you page 12 of your report, you showed an estimated production of 6400 barrels. Is that correct? A. For the first year.

Q. Now, at the time you made this report in July of 1945, you knew, as shown by your summary of production by records as contained on page 18, that that well had produced 6,614 barrels of net oil, did you not? Strike that had produced 7,255 barrels of net oil. Is that correct?

Mr. Weymann: That is objected to as improper cross examination. I think counsel is attempting here to show the [331] same thing that is shown by the exhibit that is excluded.

Mr. Dechter: This is your own testimony, not my exhibit.

Mr. Weymann: No. You are cross examining him on actual production.

Mr. Dechter: You have offered that in evidence as your exhibit.

Mr. Welmann: May I have the question read, please?

The Court: Read the question, please.

(Question read.)

The Court: Mr. Weymann and Mr. Dechter, are you referring to Plaintiff's Exhibit 8?

Mr. Dechter: That is correct, your Honor.

Mr. Weymann: I have a copy of this.

The Court: The objection is overruled.

(Testimony of Graydon Oliver.)

Q. By Mr. Dechter: Do you want the question read again?

A. No. I believe I understand the question. The production for the year 1942 was 7,255 barrels which included the months of October, November, and December, which were subsequent to September 28, 1942. My estimates were based upon the continued operation of the well as reflected by the records prior to September 28, 1942, and did not take into consideration the operation of the well subsequent to September 28, 1942. [332]

Mr. Dechter: May I have the question read again, Miss Reporter please,

(Question read.)

Mr. Dechter: I move to strike out the answer as not responsive. I think the question calls for a yes or no answer, whether he knew when he made this estimate of that particular fact.

The Court: It may go out. Just answer the question, please, Mr. Oliver.

The Witness: I knew the production of the well for the year 1942, yes.

Q. By Mr. Dechter: I will ask you if it isn't a fact that at the time you made this valuation in which you estimated the production for the year 1943 at 5800 barrels, that you knew that for the first six months of 1943 the well had already produced 4,124 barrels, showing you Plaintiff's Exhibit No. 8.

A. I knew the production of the well, actual

(Testimony of Graydon Oliver.)

production of the well, for the first six months of 1943, yes.

Q. What in your opinion would be the fair market value to replace the personal property and equipment on Block's Well No. 10 in October, 1943 for the purpose of operating the well as a producing oil well?

A. The only estimate that I can give would be the replacement value new of all the equipment contained in the [333] inventory taken by the Union Oil Company on September 28, 1942, which, according to my estimate, was $19,846.85.

Q. Now, isn't it a fact that you subsequently discovered that inventory was incomplete because it did not contain the tubing, rods and pumping equipment, and that the inventory was amended to include those items as shown by Plaintiff's Exhibit C of its amended complaint as contained on Pages 1 to 4 thereof?

A. The inventory contained on pages 1 to 4, I believe, is identical—no, it is not.

Q. You were the one that called the attention of the United States Attorney to the fact that that equipment should be on there, isn't that a fact, Mr. Oliver? A. That is correct.

Q. And as a result of your calling that to their attention, the following letter was written by the Union Oil Company on August 6, 1943, copy of which was sent to you, copy to Mr. Brett, the United States Attorney, and copy to the Defense Plant Corporation, reading as follows:

(Testimony of Graydon Oliver.)

"Union Oil Company of California
Union Oil Building
Los Angeles, California

August 6, 1943

Law offices of Raphael Dechter
633 Subway Terminal Building
Los Angeles 13, California
Attention of Miss Jessie Dolfin [334]

"Dear Miss Dolfin:

"In reply to your request of July 28, 1943, re-inventory of material and equipment taken over by the Defense Plant Corporation from Block's Oil Company Well No. 10, please be advised that the record of casing, tubing and rods was not available at the time the original inventory was prepared. Subsequently it has been determined that there was in the hole the following material: 4,900 feet of 3/4 inch sucker rod, 1500 feet of 7/8 inch sucker rod, 6,487 feet of 2-1/2" ten thread upset tubing, 6,275 feet of 7-inch casing, and 306 feet of 5-3/4 inch liner.

"Very truly yours,
"R. A. KEANS."

The bottom of the letter shows that copies were mailed to Defense Plant Corporation, Irl D. Brett, United States Attorney, and Mr. Graydon Oliver.

Do you recall receiving that letter?

A. I believe I did. I don't recall particularly.

Q. Now, I will ask you with those items added

(Testimony of Graydon Oliver.)

to your inventory, what would be the fair market replacement value of that equipment on Block's No. 10 well as an operating well in October of 1943?

A. May I see that letter again, please?

Q. Yes (handing document). [335]

A. Well, those items were all included in the inventory which I used on my estimate of $19,-846.85. That would be the estimate of replacement cost new as of September 28, 1942.

Q. Will you point out in your inventory where those are?

The Court: Pardon me just a moment. I think it is time for our noon recess.

Mr. Oliver, I believe you have stated that so far as this equipment was concerned, there was no substantial difference in the value between the two dates we have mentioned, September of 1942 and October of 1943?

The Witness: In an as is condition, your Honor, yes.

The Court: Very well. The court will recess at this time until two o'clock. The jury will bear in mind the admonition of the court heretofore given.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.) [336]

Los Angeles, California,

Friday, July 27, 1945. 2 p.m.

The Court: First, I want to ask pardon for being late. I am very sorry.

The jurors are all present; is it so stipulated?

Mr. Weymann: So stipulated, your Honor.

Mr. Dechter: So stipulated, your Honor.

The Court: Proceed.

GRAYDON OLIVER,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued)

By Mr. Dechter:

Q. Mr. Oliver, I will ask you if in arriving at your valuation of the leasehold at $3150.00 you took into consideration the figures contained in your summary of actual production, which I believe is Plaintiff's Exhibit 8, which shows that for the period January, 1941 to September, 1942 the well produced a total of net oil of 10,972 barrels.

The Court: Read that question, please.

(The question was read.)

A. Yes, I took into consideration all the production figures of the well prior to September 28, 1942.

Q. By Mr. Dechter: You took into consideration the [337] fact that that amount of oil would

(Testimony of Graydon Oliver.)

net the operator for that period approximately $3,000.00, figuring it at 80 cents a barrel?

A. I took into consideration the production figures. I don't believe that I converted that into the amount of money that the operator received.

Q. In other words, you considered that the well was not worth more than 21 months of past production?

A. I concluded that the probable market value approximated $3150.00.

Q. I will ask you if it isn't a fact that the map which is on the blackboard and marked Plaintiff's Exhibit 1 is only a part of what the Division of Oil and Gas designates as the Playa del Rey oil field?

A. I don't believe I understand your question, Mr. Dechter.

Mr. Dechter: The reporter will read it.

(Question read.)

The Witness: If you will show me the exhibit. I am not familiar with the exhibit.

Q. By Mr. Dechter: You may look at it.

A. Is this the one under the chart?

Q. Yes.

Mr. Weymann: I think, Mr. Dechter, that is not Plaintiff's Exhibit 1. [338]

The Court: It isn't Plaintiff's Exhibit 1.

Mr. Dechter: What is it?

The Court: The map is Exhibit 6.

Mr. Dechter: I will amend my question, your Honor. I thought that was the first one.

(Testimony of Graydon Oliver.)

The Court: And it is only marked for identification. [339]

Mr. Weymann: I will offer it in evidence now.

Mr. Dechter: We have no objection subject to the reservation mentioned at the opening of the trial.

The Court: It may be received.

(The document referred to was marked as Plaintiff's Exhibit No. 6, and was received in evidence.)

The Witness: I do not believe that covers the entire area which the Division of Oil and Gas designates as the Playa del Rey oil field.

Q. By Mr. Dechter: In addition to the area shown on this map, there is an area which takes in most of Venice, does it not, lying along the ocean that is included in the Playa del Rey field?

A. I don't believe that is called the Playa del Rey field. I believe it is called Venice, if I am not mistaken. They usually combine the two together, however.

Q. I am asking you as an expert if the Division of Oil and Gas does not designate the entire territory including Venice as the Playa del Rey oil field?

A. I think it is identified as the Playa del Rey Venice oil field.

Q. Well, it is a part of what the Division of Oil and Gas designates as the Playa del Rey oil field.

A. This map covers a part of what the Division of Oil and Gas calls the Playa del Rey oil field, yes.

(Testimony of Graydon Oliver.)

Q. When were most of the wells in the Venice section of the Playa del Rey oil field brought in, Mr. Oliver?

Mr. Weymann: That is objected to as incompetent, irrelevant and immaterial.

The Court: Well, it appears to the court to be preliminary. You may answer if you know.

The Witness: I believe the discovery of the Venice section was made about the latter part of 1928 or the first part of 1929. My associates at that time, Mr. A. A. Curtiss, with whom I made my office, was responsible for the discovery of that field, so I was quite interested in it at the time.

Q. By Mr. Dechter: And isn't it a fact that wells in the Venice oil field are still producing that were brought in in the years 1928, 1929?

Mr. Weymann: That is objected to as no proper foundation having been laid. It has not been shown that the wells in the Venice oil field are producing in the same structure as wells in the Playa del Rey oil field, as designated on the map, Plaintiff's Exhibit 6.

The Court: I think the objection is good. Sustained.

Mr. Dechter: May I make an observation?

The Court: I have already ruled. Now, if you want to lay a further foundation, it may be proper.

Q. By Mr. Dechter: I will ask if it isn't a fact that there are wells producing in the Venice part of the [341] Playa del Rey field which have been on production for over 15 years?

(Testimony of Graydon Oliver.)

Mr. Weymann: The same objection.

Mr. Dechter: My purpose, your Honor——

The Court: Wait until Mr. Weymann finishes, He arose first.

Mr. Weymann: The same objection, on the ground that no proper foundation has been laid to show that the wells to which Mr. Dechter is referring are on the same structure as the Playa del Rey field.

The Court: Now, what have you to say, Mr. Dechter?

Mr. Dechter: Your Honor, my contention is that it is one and the same field. It is designated by the Division of Oil and Gas as the same field, but my primary purpose is to show that wells do have a long life. Here are wells in the same field designated by the Division of Oil and Gas that have been producing for 15 years and are still producing in commercial quantities.

The Court: I think you should ask him some preliminary questions as to the similarity of the wells and the type of oil. It seems to the court that would be desirable. The objection is sustained.

Q. By Mr. Dechter: I will ask you if it isn't a fact that the Union Oil Company has wells in both the Venice section and the Del Rey section of the Playa del Rey field? [342]

A. Yes. I believe the Union Oil Company has wells in both sections of the field.

Q. And isn't it a fact that the lease known as the King Vidor lease lies partly in what is known as the

(Testimony of Graydon Oliver.)

Del Rey section and partly in what is known as the Venice section of the Playa del Rey field?

A. I believe that is true.

Q. I will ask you if it is not a fact that wells brought in in 1928 and 1929 by Union Oil Company on that lease are still producing?

Mr. Weymann: That is objected to on the ground that no proper foundation has been laid. The fact that they were brought in on the same lease is not indicative that it was on the same structure.

Mr. Dechter: The King Vidor lease is designated on your map.

Q. By Mr. Dechter: Will you step to the board, Mr. Oliver, and indicate to the court and jury where the King Vidor lease is?

A. I believe this is a portion of the Vidor lease right in here (indicating).

Q. Which has on it leases marked 5, 15, 10, 11, 16, 13, 6, 8, 7, 9, 12 and 7.

The Court: Let Mr. Clifton take off that top sheet. Will you read the question?

(Question read.) [343]

The Witness: There are some wells on that lease that were completed in 1935 in the area you mentioned or thereabouts that are still producing, and there are other wells that have not been producing for quite a number of years. I do not have the exact records with me, but it would be very simple to dig them up and show them to you.

Q. By Mr. Dechter. Alongside this may there

(Testimony of Graydon Oliver.)

is a legend which shows what wells are producing, what wells are idle, and what wells have been abandoned, is there not?

A. That is correct.

Q. Do you see any wells marked abandoned on the Vidor lease?

A. According to the legend on the map they construe these wells to be producing, but actually the production records show they have not been producing for a considerable period of time.

Q. When did you see those production records?

A. I have all the production records up to September, 1942.

Mr. Dechter: May I have a stipulation from you, Mr. Weymann, for the purpose of the record, as of what date this map was prepared?

Mr. Weymann: The map was prepared——

Mr. Dechter: Here at the bottom it says, "Prepared by George L. Schmutz for the Department of Justice Lands Division [344] June 7, 1943." Is that correct?

Mr. Weymann: I will stipulate it was prepared June 7, 1943.

Mr. Dechter: I will accept the stipulation.

I will withdraw the former question of Mr. Oliver.

Q. By Mr. Dechter: Mr. Oliver, are you familiar with the well located in the middle of the street on La Cienaga between Third and Beverly Boulevard?

A. Yes.

Q. For how long has that well been producing?

(Testimony of Graydon Oliver.)

A. Well, I couldn't say, Mr. Dechter. I recall it having been producing as early as 1924, '25, to my recollection. It may have been producing many years prior to that.

Q. At least it was producing when it first came to your attention in 1924? A. Yes.

Q. And that is part of the old Hancock-LaBrea field, is it not?

A. I believe it is called the LaBrea Salt Lake field, if I am not mistaken.

Q. You don't know the circumstances as to why that well was left there in the middle of the street, do you?

A. I have heard them, but I don't recall now, no.

Q. You didn't take that into consideration in making your opinion on this well? [345]

A. Not at all.

Q. Are you familiar with the sales of royalties made in this very court room in the matter of Diversified Royalties?

A. I have been familiar with the sales of royalties made by Diversified Royalties, yes, but I can't recall them at the moment.

Q. Are you familiar with the fact that some of the royalties were sold on the basis where the buyer would not get his money back for 10 or 13 years based on the income then being produced?

A. Mr. Dechter, I would have to know the actual property and investigate it. It is very difficult for me to answer a question like that. I really can't answer it.

(Testimony of Graydon Oliver.)

Q. Are you familiar with the fact that Diversified Royalties before it went into bankruptcy would sell royalties to the public on the basis where the buyer would not get his money back for periods ranging from 7 to 12 years?

A. In a general way I am familiar with many of the royalties that were sold by Diversified Royalties as I had to, upon various occasions, value some of those royalties; but I don't recall specifically what they were sold at. I made estimates of the recoverable oil incidental to many——

Q. That isn't my question. All I am asking you is if you are familiar with the fact. You can answer it yes or no and then explain it as much as you want. My question, Mr. [346] Oliver, simply is Are you familiar with the fact that sales——

The Court: I think that the answer is sufficient to show he is not familiar with it.

Mr. Dechter: Very well, your Honor. That is all, your Honor.

Redirect Examination

By Mr. Weymann:

Q. Mr. Oliver, calling your attention to Plaintiff's Exhibit 6, and with particular reference to the well designated as Colly No. 1, was that one of the wells in the sublease, the subject sublease in this action? Will you step to the board, please?

Mr. Dechter: We will stipulate, if you want a stipulation, Mr. Weymann, that the well formerly known as Colly Well No. 1 is the same as Block's Well No. 10, if that is what you want to know.

(Testimony of Graydon Oliver.)

Mr. Weymann: Very well. And will you stipulate that the well formerly known as Colly No. 2 was included in the Block sublease?

Mr. Dechter: It is included in one of the parcels.

Mr. Weymann: In one of the parcels?

Mr. Dechter: Yes.

Mr. Weymann: On which the defendant here has a sublease?

Mr. Dechter: That's right. But that sublease has been abandoned and that well abandoned. [347]

Mr. Weyman: Will you stipulate——

Mr. Dechter: We are making no claim for any damages for that.

Q. By Mr. Weymann: Mr. Oliver, do you know when Colly Well No. 2 was placed on production?

Mr. Dechter: Your Honor, we will object to this upon the ground it is immaterial and not proper redirect.

The Court: I think it is a matter of redirect examination.

Mr. Weymann: It is redirect; he has gone into production.

Mr. Dechter: Can I ask the witness what he is using for the purpose of testifying? There has been no foundation laid for the use of any papers, your Honor.

The Court: What are you referring to, Mr. Oliver?

The Witness: I am referring to my own notes, your Honor, relative to this particular well that Mr. Weymann has asked me a question about.

(Testimony of Graydon Oliver.)

A. This well was completed on June 24, 1935, at the rate of approximately 2300 barrels per day.

The Court: The only question was when was it placed on production. You say it was completed for production on that date.

The Witness: June 24, 1935.

The Court: Just be seated now. [348]

Q. By Mr. Weymann: Was that well abandoned, Mr. Oliver?

Mr. Dechter: We will stipulate it was abandoned, your Honor. I so stipulated already. We are making no claim for compensation based on that particular well and leasehold.

Q. By Mr. Weymann: Mr. Oliver, will you go to that map, please, and point out the wells which in your opinion are in the same drainage area and on the same structure as the Colly Well No. 10 which to your knowledge were abandoned prior to September 28, 1942?

The Court: You said "Colly Well No. 10;" is that the same as Block Well No. 10?

Mr. Weymann: Block Well No. 10, I mean, your Honor.

The Witness: You wish me to call them off, Mr. Weymann?

Q. By Mr. Weymann: Yes, call them off.

A. It is rather difficult for me to read them from this particular map. I can point out those that have been abandoned merely from the symbols on the map, but I will have to refer to my records. These wells here and here (indicating).

(Testimony of Graydon Oliver.)

Mr. Dechter: If the witness can't answer the question I don't think he should volunteer anything.

Q. By Mr. Weymann: Confining yourself for the moment, Mr. Oliver, to the wells which were drilled on the original Spangler lease.

A. I believe the original Spangler lease was this portion [349] in green and the portion in purple, was it not? This well here was abandoned (indicating), No. 13.

(The answer was read.)

Mr. Dechter: Is that a question or an answer? I move to strike it.

The Court: Read it again, please.

(The answer was reread.)

The Court: There was no answer to the question asked by Mr. Oliver, and then he proceeded. Now, what is your motion?

Mr. Dechter: I move to strike out the answer of Mr. Oliver as to what he believes, as his conclusion and guess; upon the further ground, as to the question, that no proper foundation has been laid to show what his knowledge is.

The Court: It may go out.

Mr. Weymann: Pardon me. I didn't hear that.

The Court: The Court granted the motion to strike it. Now, if you have any further questions you may proceed, Mr. Weymann. The granting of the motion of the court doesn't prevent you from proceeding along the same line, but it is rather confusing in the record and should be straightened out.

(Testimony of Graydon Oliver.)

Q. By Mr. Weymann: I will ask you this question, Mr. Oliver: Do you know how many wells in the same area, same drainage area as Block's Well No. 10 were abandoned prior to September 28, 1942, if any? [350]

A. I could give those to you from my records.

Q. Have you your records here? [351]

A. Mr. Weymann, my records do not appear to be in shape so that I can answer that question in a short period of time. The only answer that I can make to that question is that there were a great number of wells having a drainage in the same basin in the same area which the Colly No. 10 well was draining from that were abandoned prior to September 28, 1942, but I would have to go into my records to get the list of those wells.

Q. Mr. Oliver, you testified shortly before the noon recess as to the replacement cost of the equipment in the Block's well as being $19,846.85. In your opinion was it economically feasible to reproduce that equipment as it was on September 28, 1942, upon that date and for the same purpose for which it had been used?

Mr. Dechter: To which we object on the ground that it calls for a conclusion of the witness.

The Court: Read the question, please.

(Question read.)

Mr. Dechter: And upon the further ground that it is entirely incompetent, irrelevant and immaterial. Nobody asked the government to come and take over this equipment and personal property,

(Testimony of Graydon Oliver.)

and all we are asking them to do is pay the fair market value of that equipment as of that date.

Mr. Weymann: As to the first objection, the witness is qualified as a petroleum engineer, as a valuation engineer, [352] and necessarily qualified to determine the cost of the production of a well; and on the second ground, that we are entitled to show the actual market value of that equipment, and the question of whether it can be used or whether it is economically feasible to reproduce that for the purpose of continuing the production of that well is certainly something we are entitled to have go into the record.

Mr. Dechter: May it please the court, we have no objection to their showing what the actual market value of that equipment was, but what might have been economically feasible for a major oil company to operate and what might have been economically sound for an individual is a matter of difference of opinion on the part of operators.

The Court: Well, Mr. Weymann, I think Mr. Oliver is qualified to answer the question, but it occurs to the court that it wouldn't be so very helpful. I don't know. I will ask you about it, but it seems to the court that what you are interested in is the value of the equipment as it was at that time or at that place and the kind of equipment it was.

Mr. Weymann: Well, that is what I am interested in, your Honor, but then this further question arises. If it was not economically feasible to reproduce it for the purpose of operating that well, then

(Testimony of Graydon Oliver.)

its only value would be its market value for the purpose of taking it away.

The Court: Well, this referred to new equipment. [353]

Mr. Weymann: That is, the witness had testified to the replacement value of the equipment now on the well.

The Court: That is with new equipment?

Mr. Weymann: With new equipment, yes.

The Court: But could it be replaced and the well operated with used equipment, Mr. Oliver?

The Witness: No.

The Court: It would have to have new equipment?

The Witness: No. It would be impossible to replace the casing in the hole with new equipment.

The Court: I don't believe Mr. Weymann included that casing in the hole which could not be removed. He said that they referred to that part which we will designate as personal property and a portion of the casing which could be removed which was about eight or nine hundred feet.

I really don't understand the purpose of your question, Mr. Weymann. It seems to me what we are concerned with is the value of the equipment as it was there and the date would be either October 4, 1943, or September 28, 1942, and the general testimony is to the effect that there was no substantial difference in the value.

Mr. Weymann: What I am trying to arrive at now is the market value of that equipment.

(Testimony of Graydon Oliver.)

The Court: As it was?

Mr. Weyman: As it was. [354]

The Court: Well, I think that is entirely proper.

Mr. Weymann: But the point is this. Its market value would differ materially I expect to show, if it could be used in connection with that well, if it was economically feasible to use it in connection with that well, or if it would have to be removed to some other site to realize its [354-a] highest market value, and that question is a preliminary question to determine that point.

The Court: The objection is overruled. You may answer.

Mr. Dechter: May I note an exception.

Mr. Weymann: Will you read the question, please?

The Court: If you please, Miss Reporter.

(Question read.)

The Witness: Well, I don't see how it could be replaced. In other words, it was used equipment and to duplicate the exact conditions of that used equipment and replace it, I don't think it would be economically feasible.

Mr. Dechter: We move to strike out the answer, your Honor, as a conclusion of the witness and on the further grounds that it is incompetent, irrelevant and immaterial, and has no bearing on the fair market value of the equipment at the time of its lawful taking.

The Court: The motion is denied. Proceed.

(Testimony of Graydon Oliver.)

Mr. Dechter: May I note an exception?

The Court: Yes.

Q. By Mr. Weymann: Mr. Oliver, did that valuation which you gave of $19,846.85 include the casing and the liner which could not be removed, which constituted part of the realty?

A. Yes.

Q. What in your opinion is the fair market value of [355] the equipment less the casing and the liner in the well as it was on September 28, 1942?

A. I believe that I have already testified——

Q. And not used in connection with the Block's well No. 10?

Mr. Dechter: The same objection to the question, your Honor, on the ground that it is incompetent, irrelevant and immaterial. We are not interested in equipment lying in someone's yard. We are interested in the value of equipment located at this well and used in connection with this well.

Mr. Weymann: That is the very bone of contention here, your Honor. The defendant is asking as a separate item, not as something making up a part of the value of the well as a whole, but is asking a separate award for this equipment as it was used at that time. Now, either the equipment should be valued as part of the well for the production of the future oil and then valued at its salvage value, or if it is valued as of October 4, 1943, then we will pay for it, and if we pay for it in connection with the well, we are paying for it twice.

(Testimony of Graydon Oliver.)

The Court: The objection is overruled. You may answer.

The Witness: The only value I could assign to it——

The Court: Oh, no. What was the value? That means the value in money, in dollars.

The Witness: I am not prepared to answer your Honor. [356]

The Court: Well, what was the value in money on that date, the fair market value on that date used in connection with the well as it was used?

The Witness: It had a salvage value on that date.

The Court: No, no. Don't give the salvage value, just give the value as it was on that date. If there is any objection on the part of either party to these questions, you may feel free, of course, to make your objections.

The Witness: It is impossible for me to make severance of the physical equipment from the production of the oil well itself. Either you are going to have production of oil or else you are going to have the salvage of the physical equipment, and the two cannot be separated.

Mr. Dechter: We move to strike the answer, your Honor, as being not responsive and being argumentative.

The Court: Yes. It may go out. Will you read the question?

(Question read.)

The Court: You can't give that?

(Testimony of Graydon Oliver.)

The Witness: No, sir.

The Court: On October 4, 1943?

The Witness: No, sir.

The Court: Well, when you gave your statement of the fair market value of the leasehold, did you or did you not include a valuation of the equipment and material within such valuation? [357]

The Witness: I did.

The Court: And you say that that would be substantially the same either on September 28, 1942 or October 4, 1943?

The Witness: Yes, sir, just approximately the same.

The Court: Read that answer, too, because Mr. Oliver was addressing himself to the court and lowered his voice accordingly.

(Answer read.)

The Court: You may proceed.

Mr. Weymann: That is all, Mr. Oliver.

Recross Examination

By Mr. Dechter:

Q. Mr. Oliver, isn't it a fact that a well in an oil field or reservoir drains the sand in that entire field or reservoir?

A. It drains the sand for a distance around the well both depending upon the permeability of the sands and the pressure within the formation, together with the viscosities of the fluid production.

Q. In other words, the oil is migratory and mi-

(Testimony of Graydon Oliver.)

grates from one part of the oil and gas reservoir to another. It does not remain in one spot?

A. Oil is definitely migratory, but it migrates from the lower part of the structure to the upper part of the [358] structure.

Q. And if the Colly Well No. 10 was the only well in this field, then it would drain eventually all the oil in the field, would it not?

A. No, I don't think that is true.

Q. Well, an oil and gas reservoir is just like a tank of fluid, is it not?

The Court: Well, I think he has explained that, Mr. Dechter, that it varies according to the formation in the sand and the viscosity of the oil, that is correct, isn't it, Mr. Oliver?

The Witness: Yes.

The Court: Some oil is more volatile than others and some is very heavy. This is about 19-degree gravity, and that is what you might call just a medium gravity oil. Is that correct?

The Witness: Yes, sir.

The Court: The lighter oil might have a more fugaceous tendency than that of a heavier oil, and then sometimes that might vary according to the permeability of the surrounding sands. Is that correct?

The Witness: That is correct, together with the structural position of the individual well.

The Court: That is right, but it not only is migratory in an up and down movement, but it is

(Testimony of Graydon Oliver.)

somewhat migratory in [359] a lateral movement as well?

The Witness: That is correct.

Q. By Mr. Dechter: Well, when wells are abandoned like the wells you say were abandoned in the vicinity of the Colly Well No. 10, what traction does it have on the remaining well or like Colly No. 10 well insofar as its productivity is concerned?

A. It could have various effects. It could have a very beneficial effect of increasing production from the remaining wells, or it could have an opposite effect by allowing a greater amount of water to penetrate into the sands at that particular location.

Every well that is producing from a reservoir produces to the economic limit, and when that well begins to produce water it takes the water possibly from some other well in the vicinity that is producing, and as I said in the first place, it might have the beneficial effect of enhancing the recovery of oil from the wells that are left.

Q. And the reason it would enhance the amount of oil recovered is that there would be so many less straws, so to speak, to take out the oil as was the case before the other wells were abandoned.

A. All the factors that I previously enumerated must be taken into consideration. The structural position of the individual well is of paramount importance. [360]

Q. The purpose of the laws and regulations of the Division of Oil and Gas on abandonment is to

(Testimony of Graydon Oliver.)

prevent as much as possible the contamination of other remaining oil wells. Isn't that a fact?

A. That is correct.

Q. Now, in viewing the wells that have been abandoned around the Colly well, you don't know whether they were abandoned for mechanical reasons or because of the fact that the operator felt it wasn't sufficiently productive, do you?

A. Yes. I have the records of the wells and at the time I made the valuation I investigated these records to ascertain the reasons for their abandonment and some, as you say, were due to mechanical problems. Some, as you say, were due to the economics where the individual operator did not consider they were worth while producing.

Q. Well, the notice of abandonment, Mr. Oliver, does not state usually that it is abandoned because of mechanical difficulties or because of the fact that it is non-productive to the operator, does it?

A. If you read the well's history and records, I think you can draw your own conclusions as to the mechanical problem involved.

Q. In other words, a well might have been on production for five years producing a large quantity of oil. The operator might have pulled a tubing for the purpose of reconditioning [361] the hole and had a strand of tubing stuck in a hole which he was unable to get out. Doesn't that happen quite frequently?

A. Yes, I assume it does. I have known of it happening.

(Testimony of Graydon Oliver.)

Q. And that would be abandoned for reasons that had nothing to do with productivity of the well, wouldn't it?

A. That is correct, but it would be for an economic reason.

Mr. Dechter: I believe that is all.

Redirect Examination

By Mr. Weymann:

Q. Mr. Oliver, the incident of a strand of tubing being stuck in the hole which you testified sometimes occurs is one of the hazards of oil production, is it not? A. It is. [362]

Q. And that is taken into consideration by a prospective purchaser in purchasing oil-producing property?

A. A person that is acquainted with the purchase of oil property takes those things into consideration.

Q. Will you tell us where Block Well No. 10 is located on this structure? Is it located on the top of the structure or the flank or on the bottom of the structure?

A. It is located on the flank of the structure, relatively low structurally. I could draw you a diagram on the blackboard there that will illustrate what I mean by that.

Q. Will you do that, Mr. Oliver?

(Witness at blackboard.)

A. Subsurface sands in the Playa del Rey area

(Testimony of Graydon Oliver.)

vary in thickness from zero to a probable total thickness of some 300 feet. Wells located at such a position as this (indicating) have found no oil sands whatsoever.

Q. By Mr. Weymann: Pardon me, Mr. Oliver. Can you stand over on this side so the jury can see that?

A. A well located at such a position have found——

The Court: Mark that "A" please.

A. (Continuing) ——at "A" have found no oil sands whatsoever. Wells located at such a location as "B" have found varying thicknesses of oil sand depending upon its structural location.

Wells located beyond B have very often found the sand to [363] contain exclusively water. The well located at B may have been clean at the time it was originally produced, but the water soon came in from the bottom showing that the water table was just beyond or lower than the reaches of the well.

Wells located between the positions of A and B have found varying thicknesses of oil sand, and many times wells located at C have found exclusively gas with a small amount of oil.

The well of the Colly No. 10 on September 28, 1942 was in the relative position of the well B. Probably prior to September 28 that well would have been located in some such relative position as position marked D, but as the oil was depleted from the formation the water came in from this

(Testimony of Graydon Oliver.)

direction (indicating), replacing the depleted oil so that by the time this valuation was made we found the Colly No. 10 well to be at some such relative position as shown by B.

There were a number of wells that delineated this so-called oil-water interface in the reservoir proper. There were also a sufficient number of wells drilled that delineated the position of the pinch-out line shown between the well locations A and C. These are all a matter of study by both myself and the engineers for the Railroad Commission and have been set on paper in graphical forms.

Q. Have you completed your answer, Mr. Oliver? A. Yes. [364]

Mr. Weymann: No further questions.

Recross Examination

By Mr. Dechter:

Q. I show you a contour map, and I will ask you if you recognize that as a contour map of the Playa del Rey field?

A. That is a map of the Venice and Playa del Rey areas showing one engineer's interpretation of of contours on the top of the schist.

Q. That shows, does it not, both the Venice area and the del Rey area as part of one field known as the Playa del Rey oil field, does it not?

A. The contours are continued from the Playa del Rey area over to the Venice area, but it does not necessarily show them to be one area. These

(Testimony of Graydon Oliver.)

are merely contours on top of the schist which is the basement complex of this area.

Q. Some of these wells produce from within the schist itself, do they not?

A. They produce from the fractured material on the top of the schist.

Q. As a matter of fact, the best production is gotten from the top of the schist.

A. I don't believe that is true in the Playa del Rey area.

Q. And that shows that the schist or structural contours extend from the Venice area right on up to the del Rey area, [365] does it not?

A. By like position the structural contours would continue clear on down to El Segundo and elsewhere. This is merely a topographic expression of a subsurface formation.

Q. Well, it shows at what depth the sands are found, in other words, it shows at what depth the oil sand is found in the Venice field and what depth the same sand is found in the del Rey field, does it not?

A. No, it does not. It has no relation to the oil sand.

Q. What does it show in so far as the oil structure? A. Nothing.

Mr. Dechter: I will ask that this be marked for identification at this time, your Honor.

The Court: Let it be marked as Defendant's Exhibit C, for identification.

(Whereupon, the document referred to was

(Testimony of Graydon Oliver.)

marked as Defendant's Exhibit C, for identification.)

The Court: Is that all, Mr. Dechter?

Mr. Dechter: That is all.

Mr. Weymann: That is all.

The Court: You are excused.

Mr. Weymann: Mr. Wents. [366]

JOHN H. WENTS, Jr.,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please.

The Witness: John H. Wents, Jr.

Direct Examination

By Mr. Weymann:

Q. What is your profession or occupation?

A. I am a consulting geologist, engineer, and appraisal engineer.

Q. Do you maintain an office in the City of Los Angeles? A. I do.

Q. Where?

A. 508 Subway Terminal Building.

Q. Will you state briefly your education and your professional experience as a consulting engineer?

A. I was educated at Stanford University and

(Testimony of John H. Wents, Jr.)

the University of Southern California, attending Stanford University between the years of '23 and '27, University of Southern California between '34 and '39. I was first employed by the Marland Oil Company of California in the valuation and research department as a geologist——

Mr. Dechter: Will you speak a little louder?

A. I was first employed at the Marland Oil Company of California in the valuation and research department as geologist [367] in 1927. I continued that employment until 1929, at which time I was employed by the Associated Oil Company as a petroleum engineer, later as a geologist. I worked in the Associated Oil Company from 1929 to 1934. I was resident engineer and geologist in the central coastal area when I left the employ of the Associated Oil Company.

In 1934 I became associated with the Diversified Royalties, Limited, as chief geologist. I maintained that employment from 1934 to 1939. In 1939 I went into business for myself as a consultant. I have been continuously employed since 1939 as a consultant.

Q. Will you give the names of some of the firms for whom you have acted as consultant?

A. I am retained by the Dominguez Estate Company, the Carson Estate Company, the Watson Land Company, J. Paul Getty, Harold C. Morton, Lebow & McNee, George D. Nordenholt, Kohlbush & Morton, Miller & Miller, the Royal Petroleum Company, Pacific-American Oil Company, Sierra

(Testimony of John H. Wents, Jr.)

Oil Company, St. Francis Oil Company, H. M. Holloway, McMillan Oil Company.

The Court: He just asked you to name some of them.

Q. By Mr. Weymann: And many others?

A. The list goes on.

Q. What is the Dominguez Estates Company?

A. The Dominguez Estate Company is one of the principal owners of oil and gas lands in Southern California. [368]

Q. What were your duties as consultant?

A. I am employed——

The Court: The general duties are consultation regarding production of petroleum?

The Witness: Lease interpretation and production of petroleum, lease maintenance.

The Court: I just want to shorten the time, Mr. Weymann.

Q. By Mr. Weymann: In such duties did you have occasion to appraise oil properties?

A. Yes, I have many times.

Q. And that is including the equipment?

A. Yes, I have appraised equipment.

Q. Have you made any appraisal for any banks?

A. I made appraisals for the Citizens Bank, the Security-First National Bank, the Bank of America, in Los Angeles; Chase National Bank and Corn Exchange Bank of New York City.

Q. In connection with the purchase and sale of oil royalties?

A. Oil royalties and oil properties, yes.

(Testimony of John H. Wents, Jr.)

Q. You were employed by the Department of Justice to make an appraisal of the subject property, were you not?

A. I was employed to make an appraisal of the subject property.

Q. What did you do for the purpose of making such [369] appraisal?

A. My first step in making the appraisal was to obtain a copy of the so-called master lease, which is the Spangler lease. Then, also, to ask and be furnished with material with respect to the assignment or sublease which occurred by virtue of a disassociation of part of the Spangler lease. I then obtained permission to examine the records of the well which we refer to now as Block 10, which was originally drilled by the Colly Oil Company as Colly No. 1.

I went to the Division of Oil and Gas and obtained the record which commenced with the filing of the notice of intent to drill that well and carried through to its completion. I examined the production record of that well from the time it was put on production through to the date of the valuation.

I also examined the production of the well since it was taken over by the Defense Plant Corporation.

Q. In forming your opinion as to the value of the subject property what facts, what factors, did you take into consideration?

A. I might add that in forming my opinion I was also governed by the records and histories and

(Testimony of John H. Wents, Jr.)

production data concerning other wells in the locale of the Block 10. After examining that data I constructed from the Block No. 10 well a production decline curve. I used that production decline [370] curve as a basis for an estimation of future production by projection of the curve.

Q. Will you kindly state what a production decline curve is?

A. A production decline curve is simply a plot, a pattern of the production of the well in barrels for time intervals, that is all.

Q. Do you know of that method of appraisal of arriving at a valuation as one commonly used by petroleum engineers and geologists?

A. It is the common approach of petroleum engineers and geologists.

Q. After making this examination and investigation have you arrived at an opinion as to the fair market value, first, of the 10 7/12 overriding royalty of the defendant in the subleases owned by the defendant, and, secondly, the fair market value as of September 28, 1942, of the leasehold estate and the well operated thereon?

A. I have.

Q. Will you kindly state what your opinion is?

A. It is my opinion that the 10 7/12 per cent gross overriding royalty interest which I have appraised is valued at $1168.00. It is my opinion that the operating interest which is inclusive of 70 per cent of the production of the well and the appurtenances thereto is valued at $5,690.00. [371]

(Testimony of John H. Wents, Jr.)

Q. Now, Mr. Wents, will you kindly give your reasons?

The Court: Let me ask a question, if you don't mind, right there.

Mr. Weymann: Surely.

The Court: Mr. Weymann, was there any substantial change in the valuation of the leasehold interest between September 28, 1942 and October 4, 1943?

The Witness: In so far as that pertains to the oil, yes; but not as to the other property which might be a part of the leasehold interest.

The Court: As to the——

The Witness: Mechanical equipment, no.

The Court: It would be substantially the same?

The Witness: Substantially the same in my approach.

The Court: Now, proceed.

Read the question that was asked. I believe it was to give your reasons, Mr. Wents, for these valuations.

The Witness: I used the analytical method of approach to a valuation problem——

Mr. Dechter: I can't hear you.

The Witness: I used the analytical method of approach in oil and gas valuations. In other words, I translated from my production decline curve the production by years and obtained a total. I obtained a rate of production by various years. I obtained a total production of 4,793 barrels, which [372] might be allocated to the full 13 1/3 per

(Testimony of John H. Wents, Jr.)
cent gross overriding royalty interest, which divides to 3,804 barrels representing the 10 7/12 interest which we are herein concerned with. I translated that number of barrels of oil——

Mr. Dechter: Can I have that figure for the 10 7/12 per cent?

The Witness: 3,804 barrels.

I translated that figure into dollars by multiplying by 79 cents per barrel. 79 cents per barrel was arrived at from 77 cents, being the posted price of oil in the district as of the date of valuation, plus 2 cents allowance for gas and gasoline. The dollar return revolved to $3,005.00. In following the general practice of appraisal engineers I chose a discount factor, my own choice being 10 per cent, and discounted that down until I obtained a PW of $2,061.00.

The Court: You obtained a what?

The Witness: A PW.

The Court: What is that?

The Witness: Present worth factor, the engineers call it. To me I used the term "PW". [373]

That in turn, in accordance with my own investigations, the outcome of my investigation, I discounted further and obtained what I would call a figure representing the fair market value or worth. That later figure is the figure I cited before, or $1168.00 for the 10 7/12ths per cent.

Basically the operating interest was appraised in the same fashion. However, in the instance of the operating interest, I had to take into consideration

(Testimony of John H. Wents, Jr.)

the operations cost. I considered that this well could be operated by a potential buyer or by the owner for approximately $100.00 a month, plus 15 per cent. Now, that gave me a figure of $1380.00 a year or being the operating cost. Deducting operating costs from gross income which is figured on the same basis as in the instance of the gross overriding royalty on the basis of 79 cents a barrel, I found that a net income could be expected during the life of the production of $6,133.00.

The Court: What do you estimate to be the life of the production?

The Witness: I estimated it at ten years. Do you want me to read off the figures?

The Court: No. I just asked the question.

The Witness: Using the same deferment factor as previously mentioned, of 10 per cent, I obtained a P. W. of $4,765.00 for this interest. That is the 70 per cent. [374]

Mr. Dechter: Four what?

The Witness: $4,765.00. That is not inclusive of any of the value or any appraisal of physical fixtures. That discounts and reduces the fair market value to $2700.00.

Q. By Mr. Weymann: In arriving at your opinion, did you take into consideration the barrels of water produced from that well?

A. I took into consideration that the well was producing a great deal of water. I didn't consider that water production as an extreme hazard towards its future life.

(Testimony of John H. Wents, Jr.)

Q. Did that water production have any effect on your valuation?

A. The water production is responsible in a measure for my choice of an operating charge.

Q. And on what basis did you choose that operating charge? A. My experience.

Mr. Weymann: You may cross examine.

Cross Examination

By Mr. Dechter:

Q. When did you make your investigation and appraisal?

A. I was employed some time in June of 1945.

Q. And from whom did you secure this sublease that you examined? [375]

A. I secured the data on the sublease from Mr. August Weymann. I didn't say I secured the sublease.

Q. You never saw the sublease?

A. No, I didn't. I asked questions concerning the terms of the lease and they were answered.

Q. Mr. Weymann did not have in his possession for you a full copy of the sublease?

A. Not that I was advised of at all.

Q. Did you ever see the entire basic lease?

A. I saw a copy, I believe it was a copy, of the basic lease and read it in its entirety.

Q. Would you say that you arrived at a valuation of $4,765.00 for the oil based on the ten-year life without the personal property?

A. Yes, sir. That is—no. That is the net

(Testimony of John H. Wents, Jr.)

return there or P. W. of net operating income. That is the present worth or net operating income.

Q. That is the present worth of the oil reduced on a ten per cent per annum compounded discount factor?

A. That is the figure arrived at by the use of a deferment factor.

Q. Ten per cent per annum compounded?

A. Ten per cent per annum compounded and considering the income is payable monthly, is the factor I used.

Q. Compounded at ten per cent each month?

A. Ten per cent yearly basis, and compounded semi-annually.

Q. Now, were you ever engaged in the business of buying and selling used oil well equipment?

A. Not directly in the business of buying and selling used oil well equipment.

Q. Have you owned and operated any wells of your own?

A. I was associated with organizations that owned and operated wells.

Q. What organization?

A. I was with the Savage Oil Company.

Q. What Savage did was drill a wildcat well up in Northern California, isn't that true?

A. It drilled and produced from one well and drilled a second well which it lost. However, I have been associated with many firms in drilling oil wells, not directly in my association. However, I have acted as adviser.

(Testimony of John H. Wents, Jr.)

Q. You were associated as the petroleum engineer advising them where to set casing and what sands there were and things of that kind?

A. Yes, and in the choice of material selected for the operation and cost of material.

Q. In other words, you would suggest that they use ten-inch casing instead of 7-inch casing?

A. Yes, of specific design, weight and strength.

Q. Did you ever buy any used oil well equipment?

A. Various operators whom I have worked for——

Q. Just answer the question, please.

A. Direct, no. I have recommended its purchase.

Q. You had no experience personally in buying or selling used oil well equipment, had you?

A. Only in connection with my employment.

Q. And when you were employed by the Associated Oil Company, you didn't buy and sell any used oil well equipment, did you?

A. No, I did not.

Q. When you were connected with the Savage Oil Company, you were the engineer in connection with the drilling of that well?

A. Yes, I was.

Q. That company ended up in bankruptcy, did it not? A. It did.

Q. And when you were connected with Diversified Royalty, your job was making geological

(Testimony of John H. Wents, Jr.)

reports on the different properties that they contemplated buying royalties in? A. Yes.

Q. And while you were connected with them, you had no experience in buying or selling used oil well equipment? A. No, I did not.

Q. And you don't know what the fair market value of [378] used oil well equipment would be in October of 1943, do you?

A. In my opinion, I do.

Mr. Dechter: Your Honor, I am going to move to strike any portion of the testimony of this witness insofar as it pertains to valuation of personal property, upon the ground that it clearly appears the witness is not qualified.

The Court: The motion is denied.

Mr. Dechter: Exception.

Q. What in your opinion was the fair market value of this personal property as shown on the inventory Exhibit C of Plaintiff's Amended Complaint? You have seen that inventory, haven't you?

A. Yes, I examined that inventory. The salvage value or market value——

Mr. Dechter: I move to strike the answer, if the court please.

The Court: I don't believe he completed his answer, had you?

The Witness: No, I had not.

The Court: Read the question and the answer so far as it goes, and then you may complete your answer.

(Testimony of John H. Wents, Jr.)

(Record read.)

Mr. Dechter: Let me amend that question to include as of October, 1943.

The Court: Just answer as to the market value.

The Witness: As of October, 1943, that material had a market value in my opinion of $4,900.00.

Q. By Mr. Dechter: In October of 1943 did you have any experience in buying or selling any tubing?

A. I did not buy or sell any tubing in 1943. However, I was very familiar with the prices quoted.

Q. What was the O. P. A. price on 2½-inch upset tubing?

A. Second-hand tubing was 25 cents per foot in the quality.

Q. And what in your opinion was the O. P. A. ceiling price on ⅞-inch sucker rods?

A. 7 cents a foot. That is the value figure. In other words, the O. P. A. ceiling price—maybe I should correct my answers, Mr. Dechter. I am not familiar with the ceiling price as a ceiling price. However, I am familiar with trading prices which in my opinion are under the ceiling price and not over. The figure I gave you represented trading prices in the field at which I could obtain comparable equipment to that which I appraised.

Q. And you could buy sucker rods at 7 cents a foot? A. Yes, sir.

Q. Did you buy any sucker rods in the year 1943? A. There were sucker rods bought.

(Testimony of John H. Wents, Jr.)

Q. Did you buy any in the year 1943? [380]

A. No, I did not.

The Court: Will you explain your answer?

The Witness: I didn't buy any sucker rods in the year 1943. However, at my insistence sucker rods were purchased at the price that we figured at 7 cents.

Q. By Mr. Dechter: From whom were those sucker rods purchased?

A. I believe some of those sucker rods were obtained from the Oil Tool Companies.

Q. By what company were those rods purchased?

A. I believe the Royal Petroleum Company got some of those rods.

Q. What was the reasonable market value of second-hand ¾-inch sucker rods?

A. The first figure was 6 cents a foot.

Q. 6 cents a foot? A. Yes.

Q. For ¾-inch rods? A. Yes.

Q. Did you ever buy any ¾-inch sucker rod?

A. Yes. They came from the same source.

Q. You made that purchase yourself?

A. No, I did not. The purchases were made by Royal Petroleum that I am acquainted with.

Q. That is what somebody told you he paid for it? [381]

A. That is what I was informed they were worth and they paid for them.

Q. What was 7-inch casing worth in October of 1943? A. $1.25 per foot.

(Testimony of John H. Wents, Jr.)

Q. What was 5¾-inch liners worth in October of 1943? A. Approximately $1.00 a foot.

Q. What was the value of 5¾-inch liner in September of 1942?

A. Approximately $1.00 a foot.

Q. What was the value of 7-inch casing in September of 1942?

A. Approximately $1.25 per foot.

Q. What was the value of one 122-foot McClintock and Marshall steel derrick complete?

A. Erected or down?

Q. Erected. A. $1,250.00.

Q. Where could you buy a steel derrick erected for $1,250.00?

A. In other words, if I may explain my answer?

Q. Yes, I wish you would explain it.

A. I took into consideration that if the derrick was erected over this hole, its value would be——

Mr. Dechter: I move to strike out the answer on the [382] ground that it is not responsive. The question is, what was the value of the derrick as erected?

The Court: Motion granted.

The Witness: $1,250.00 down, and $1,600.00 the other way. It would be $1,500.00 to take it down.

The Court: In your opinion it was worth $1,600.00 erected, and $1,250.00 if it was taken down and taken apart?

The Witness: No. I am in error there, your

(Testimony of John H. Wents, Jr.)

Honor. In other words, had this derrick been down on the ground ready to move to another location, it would have sold for $1,600.00. Had it been standing over the hole requiring its moving, the purchaser would have to pay $1,250.00.

Q. By Mr. Dechter: What was the fair market value of that derrick installed for use in the operation of this oil well? A. $1,600.00.

Q. You could buy a derrick and install it in that well for $1,600.00?

A. It was installed.

Mr. Dechter: I move to strike the answer as not responsive and argumentative.

The Court: That is right, it may go out.

Mr. Dechter: Will you read the question, Miss Reporter?

(Question read.)

The Witness: Is that to be answered? [383]

The Court: Yes.

The Witness: No, not and install it.

Q. By Mr. Dechter: Isn't it a fact——

Mr. Weymann: Pardon me. I think he has a right to explain his answer.

The Witness: No, and not to install it, my answer was.

Q. By Mr. Dechter: Isn't it a fact, Mr. Wents, that it would cost you $6500.00 to buy this derrick and install it in the same condition as it was in October of 1943? A. No.

Q. Isn't it a fact, Mr. Wents, that it would cost you approximately $4500.00 to $5,000.00 to

(Testimony of John H. Wents, Jr.)
buy that derrick from the McClintock Marshall Company, which was the predecessor of the Bethlehem Steel Company? A. No.

Mr. Weymann: May I at this time object, your Honor, because the valuation is based on the derrick installed. There is no question here of him buying and installing a derrick on that property.

The Court: Well, it is a matter of testing the knowledge of the witness.

Mr. Dechter: I agree with Mr. Weymann, but I haven't been able to get an answer yet from the witness as to what the value is installed.

Mr. Weymann: I didn't understand that. I asked the [384] court to instruct the jury to disregard that as an element of value. If it is merely a question of testing the knowledge of the witness——

The Court: Well, it is asked for that purpose only, to show the basis of his estimate of value and it is limited to that purpose.

Mr. Weyman: There are a number of figures going in here and a number of statements made by counsel as to value.

Q. By Mr. Dechter: Have you seen this well?

A. Yes.

Q. When did you see it the first time?

A. The first time I saw it, it was very probably immediately after it was commenced.

Q. When did you see it in relation to your making this appraisal?

A. I saw the well in connection with making my appraisal some time in June of 1945.

(Testimony of John H. Wents, Jr.)

Q. Did you see the derrick there?

A. I did.

Q. You saw this equipment as belonging to Mr. Block on the well? A. Yes.

Q. That is, being used in connection with the operation of the well? A. Yes. [385]

Q. Now, assuming that you had this oil well in October of 1943 and you needed a derrick and didn't have one, and you went out in the open market to buy a 122-foot McClintock and Marshall steel derrick complete with crown block, what would it cost you to buy it and have it installed as it was when you saw it? A. Will you repeat the question?

The Court: Read the question, please.

(Question read.)

Mr. Weymann: The question is objected to on the ground that it is incompetent, irrelevant and immaterial, and having no bearing on the market value of a derrick which was installed at the time the property was taken by the plaintiff.

The Court: Objection overruled.

Mr. Weymann: Exception, please.

The Court: You may answer.

The Witness: A 122-foot McClintock-Marshall production derrick—it is not a drilling derrick, but a production derrick. I could have replaced that for $1600.00. I could have installed it for approximately $1800.00 on the foundations. In other words, $3400.00 would be about my aggregate cost.

Q. By Mr. Dechter: Will you tell me where in Southern California in the years 1942 and 1943

(Testimony of John H. Wents, Jr.)

you could have bought a steel derrick of this nature for $1600.00? [386]

A. There were derricks offered of better quality than this.

Q. By whom, name them?

A. In the Montebello field at that time, $1800.00.

Q. Isn't it a fact, Mr. Wents, that there has been a shortage of steel derricks for the last five years in Southern California?

Mr. Weymann: That is objected to as argumentative.

The Court: The objection is sustained. It seems to the court that it is not proper cross-examination. There might have been a shortage and at the same time there might have been some available at the prices the witness has stated.

Q. By Mr. Dechter: Have you bought or sold any derricks yourself? A. Three.

Q. Where?

A. In connection with my business for George D. Nordenholt.

The Court: How do you spell that?

The Witness: N-o-r-d-e-n-h-o-l-t.

Q. By Mr. Dechter: When did you buy those?

A. Last winter.

Q. From whom did you buy them?

A. It was bought from John Smith and Barnhart Morrow.

Q. What kind of a derrick? [387]

A. 134-foot drilling derrick.

Q. Steel? A. A steel derrick.

(Testimony of John H. Wents, Jr.)

Q. What did you pay for it? A. $1800.00.

Q. Where was it?

A. It was in Torrance.

Q. How long had it been used?

A. It had been used at that location approximately six months.

Q. Did you move it out?

A. No. It was moved to another location on the property. It was erected.

Q. It was moved on the same property?

A. Moved on the same property. In other words, that particular derrick had been moved to the property by a drilling contractor as his property and was later acquired by the operator of the property.

Q. And you yourself bought it from Mr. Smith?

A. I was in on the appraisal of the derrick for the account of Mr. Nordenholt, who I am adviser to.

Q. Where did you buy the other two derricks?

A. From Macco Construction Company.

Q. When?

A. For the account of the Sierra Oil Company.

Q. When did you buy them?

A. In the spring of this year.

Q. What did you pay for them?

A. $1800.00, I think, on each derrick.

Q. What kind of derricks were they?

A. 134-foot drilling derricks, steel.

Q. In connection with your valuation as to the value of the leasehold and equipment, did you consider the value of equipment for use in connec-

(Testimony of John H. Wents, Jr.)

tion with the operation of the oil well or dismantled and salvaged for the purpose of sale elsewhere?

A. Dismantled and salvaged for the purpose of sale elsewhere.

Q. In June of 1945 when you made your investigation and valuation, did you know what the posted market price for 19 gravity oil at the Playa del Rey field had been since the spring of 1943?

A. I did.

Q. And what was that price?

A. I had that price available to me, and I can check it.

The Court: The court will take a recess at this time. The jury will bear in mind the admonition of the court heretofore given. Return when called by the bailiff.

(Short recess.) [389]

The Court: The jurors are all present; it is so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated, your Honor.

The Court: Proceed.

Q. By Mr. Dechter: Mr. Wents, which of the firms you have mentioned did you ever make any valuation appraisals for?

A. For which of the firms?

Q. Yes.

A. Dominguez Estate Company, Carson Estate Company, J. Paul Getty, Watson Land Company, Harold Morton, Lebow & McNee, George Nordenholt, Kohlbush & Morton, Sierra Oil Company, St.

(Testimony of John H. Wents, Jr.)

Francis Oil Company, H. M. Holloway, Associated Oil Company, Marland Oil Company, Diversified Royalties.

Q. When you say "valuation appraisal" you made those for all those companies?

A. Yes.

Q. What was the occasion of your making a valuation appraisal for Lebow & McNee?

A. For the purpose of ascertaining whether or not it would be desirable for them to obtain a loan to further their drilling operations as of a particular time.

Q. In other words, you advise them as to whether it was advisable for them to drill a certain location or not, isn't [390] that correct?

A. No, it is not correct.

Q. In so far as Morton and Dolley is concerned, did you ever make any valuations for them in connection with the purchase of any property?

A. For Morton and Dolley?

Q. Yes.

A. No, not for Morton and Dolley.

The Court: You did for Mr. Morton alone?

The Witness: I did for Mr. Morton and other of the Morton interests.

Q. By Mr. Dechter: You did it for Harold Morton? A. Yes.

Q. In connection with what matter?

A. In connection with the purchase of the property which is now known as the Royal Petroleum Lease, the Carson Lease.

(Testimony of John H. Wents, Jr.)

Q. Who were you representing—Mr. Morton or the Carson Estate?

A. I was representing the Carson Estate Company and Mr. Morton, both, in that location.

Q. The Carson Estate, the Dominguez Estate, and the Watson Land Company are all the same ownership, are they not?

A. No, they are not.

Q. They all maintain the same office together?

A. They maintain an office at 621 South Spring Street.

Q. Did you ever buy or sell any wells in del Rey?

A. I did not buy or sell any wells in del Rey.

Q. You made an appraisal of the fair market value of this Block Well No. 10 leasehold of $2600.00, is that correct?

A. No, that is not correct.

Q. What did you testify as the present fair value of the leasehold interest?

A. Including the physical equipment?

Q. Excluding the physical equipment.

A. $2700.00.

Q. Instead of $2600.00? A. Yes.

Q. Isn't it a fact that according to the records the well produced from January, 1941, to September, '42, when the government took it over, 10,972 barrels?

A. I did not total that period of production.

Q. Do your records show that?

A. I have the complete production record.

(Testimony of John H. Wents, Jr.)

Q. It shows 6614 barrels for the year 1941, does it not? A. 6,614.

Q. It shows 7,255 barrels for the year 1942, does it not?

A. My record does not include that after September 28, 1942. [392]

Q. Then it shows 4913 barrels till the end of September, does it not?

A. My record shows 4877.

Q. Which is substantially the same?

A. Substantially the same.

Q. That makes a total of 10,972 barrels, does it not?

The Court: For what period?

Mr. Dechter: January, 1941, to the end of September, 1942. I believe the witness' records stop at September 27th or 28th.

The Witness: May I have the reporter repeat your figure?

Mr. Dechter: Yes, certainly.

(The question was read.)

A. No.

Q. By Mr. Dechter: What total do you have?

A. I have a total of 11,491.

Q. All right, 11,491. Maybe I am in error. If you multiply that by 80 cents a barrel and deduct the lifting cost that you gave of $1380.00 a year, that will give you a net return for that period January, 1941, to September, 1942, of approximately $3800.00, does it not?

A. If your mathematics are correct, yes.

(Testimony of John H. Wents, Jr.)

Q. Well, did you take into consideration that it was only worth $2700.00 for the leasehold oil rights of a well [393] that had made for 21 months previous thereto approximately $3800.00?

A. I was appraising what it would produce after September 28, 1942, not that which it had produced before that time.

Q. Isn't that some criterion of what it would produce in the future, what it produced the immediately preceding 21 months?

A. In so far as it may effect the pattern of a general production curve.

Q. A buyer buying a well would take that into consideration, would he not?

A. He takes into consideration the pattern of the past productive record.

Q. Would he not take into consideration the fact that in 21 months preceding the purchase the owner had received a net after paying costs of approximately $3800.00?

A. I would answer that no.

Q. Did you give any consideration in arriving at your valuation to the fact that the price of oil, the posted price of oil had increased to 94 cents a barrel in the spring of 1943, and that there would probably be a further increase after the war?

A. No, I did not.

Q. Did you use a 10-year life or a 12-year life?

A. I used a 10-year life.

Q. Have you advised Morton and Dolley in

(Testimony of John H. Wents, Jr.)

connection with the drilling of wells in Torrance and Redondo? A. Morton and Dolley?

Q. Yes. A. No, I have not.

Q. Or any of the Morton interests?

A. I have advised the Morton interests, but not Morton and Dolley.

Q. On the drilling of wells in Torrance?

A. Yes.

Q. And in Redondo? A. Yes, I have.

Q. And based upon your recommendation they drilled wells in Redondo?

A. Yes, they did.

Q. The initial production secured in Redondo was 30 to 40 barrels a day? A. Correct.

Q. And how much did they spend to drill a well to produce 30 to 40 barrels a day?

Mr. Weymann: Objected to as improper cross-examination.

Mr. Dechter: Your Honor will recall that Mr. Weymann asked Mr. Oliver about whether it was economical to keep this personal property that was worth so much money on the well [395] to operate. Here are wells being drilled just within the very recent period producing only initially 30 to 40 barrels a day, and we have a right to see what the comparative cost is as compared to this well, which the record shows was 20 to 25 barrels a day.

Mr. Weymann: On the further ground that no proper foundation has been laid for the question, because there is no showing that the Redondo field

(Testimony of John H. Wents, Jr.)
is of the same character, the same structure and the same potential as the Playa del Rey field.

The Court: I think it is not proper cross-examination. Sustained.

Q. By Mr. Dechter: Did you advise Lebow & McNee to drill wells in the Redondo area?

A. Yes, I did.

Q. And the initial production there was approximately 20 to 30 barrels a day?

A. You are in error in that statement.

Q. What was the initial production?

A. From 35 to 55 barrels a day. That is settled production after two weeks.

Q. What is that?

A. The figure I recite as far as initial production, may I qualify that, is a figure that is two weeks after the well commenced producing. I use that as a figure of initial. [396]

Q. Isn't that considered initial production?

A. No; the first 24 hours' production is generally considered as initial. However, I use a more settled figure.

Q. Isn't it a fact, Mr. Wents, that the average lease contains a provision that whether production is commercial or not shall be deemed the average for the first 30-day period after the well is placed on production? A. No.

Q. You never heard that provision?

A. I have heard that, but the average lease does not include that term.

Q. At any rate, that is the flow—those wells had

(Testimony of John H. Wents, Jr.)

to be put on production from the beginning, is that right? A. Correct.

Q. And isn't it a fact that the Redondo area is an extension of the del Rey-El Segundo oil fields?

Mr. Weymann: Objected to as improper cross-examination.

The Court: It is overruled.

Mr. Weymann: Exception.

A. No, it is not.

Q. By Mr. Dechter: Well, they run in the same direction, do they not? A. No.

Q. What depth are wells drilled in Redondo?

A. The completion depth is generally less than 3700 feet. [397]

Q. Are you familiar with what the costs of the Lebow-McNee wells are? A. In general, yes.

Q. What was that cost?

A. Their cost varied from $22,500.00 to approximately $27,000.00.

Q. Are you familiar with the initial production of wells drilled by Mr. Harold Morton in the Torrance area? A. Yes, I am.

Q. And what is the initial production from those wells?

A. Which specific wells are you talking about?

Q. Any wells that he drilled. I will withdraw the question. When were these wells drilled in Redondo by Mr. Morton and Lebow & McNee?

A. Commencing in 1941, I believe, is the date.

Q. And when was the last well drilled?

A. I am setting casing in one of them tonight.

(Testimony of John H. Wents, Jr.)

Q. They are still drilling for that production?

A. Yes, and they have continued to drill for them.

Q. Isn't it a fact, Mr. Wents, in the last three or four years individuals and oil companies have drilled wells for tax reasons where they know they will not get back the entire cost of drilling the well?

Mr. Weymann: That is objected to as improper cross-examination. [398]

The Court: The objection is sustained.

Q. By Mr. Dechter: I will ask you if it isn't a fact that there is a particular attraction to buyers of oil royalties that there is an allowance of 27½ per cent for depletion in connection with the payment of income taxes?

A. A royalty buyer probably takes that into consideration.

Q. In other words, that is an advantage that a buyer investing in oil royalties has over other types of investments? A. Some other types, yes.

Mr. Dechter: I believe that is all.

The Court: That is all, Mr. Wents.

Mr. Weymann: Just one question, Mr. Wents.

Redirect Examination

By Mr. Weyman:

Q. Can you tell us approximately how much money you have expended or authorized or approved the expenditure of for oil well equipment within the past three years?

(Testimony of John H. Wents, Jr.)

Mr. Dechter: To which we object upon the ground it is a compound question; upon the further ground it is incompetent, irrelevant and immaterial. What he may have authorized as a petroleum engineer would have no bearing on his qualifications in handling the purchase of oil well equipment himself.

Mr. Weymann: If he is authorized—— [399]

The Court: It doesn't appear to be redirect examination.

Mr. Weymann: Withdraw the question.

The Court: You are excused. How many more witnesses have you, Mr. Weymann?

Mr. Weymann: I think the plaintiff rests, if the court please.

The Court: Court will take an adjournment at this time until Monday morning at 10:00 o'clock.

A Juror: Monday?

The Court: Who asked that?

The Juror: I did.

The Court: Monday. We will adjourn at this time until Monday morning at 10:00 o'clock, and the jurors will bear in mind the admonitions of the court heretofore given them. Return at that time.

(Whereupon, at 4:20 o'clock p. m., Friday, July 27, 1945, an adjournment was taken until 10:00 o'clock a.m., Monday, July 30, 1945.)

Los Angeles, California,

Monday, July 30, 1945, 10:00 A. M.

The Court: The members of the jury are all present and in their places in the jury box, it is so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: You may proceed.

Mr. Dechter: Your Honor, at this time we again renew our offer of Defendant's Exhibit A, for identification, being the statement of oil and gas and natural gasoline produced from Defense Plant Corporation's Well No. 10 from September 29, 1942, to June, 1945, in evidence, having submitted to your Honor the memorandum of our points and authorities on the question, and we adopt the argument contained in that memo in support of our renewed offer.

Mr. Weymann: At this time, if the court please, I renew my objection on the ground that no proper foundation has been laid for the introduction of it. There is no showing that the condition of the field is the same as that which it was prior to the taking by the United States, and all of the evidence before the court in this case indicates that there has been a substantial change which would change the amount of production from this well.

Mr. Dechter: It is our contention, your Honor, that that would not go to the admissibility, it would go to the weight, [402] and if the evidence was offered the evidence would show there is no

additional expense of any kind that the Defense Plant Corporation had in operating the well than there was before that time.

Mr. Weymann: The question is not expense in the operating of the well, but in the actual production from the well.

The Court: The objection is sustained.

Mr. Dechter: May we note an exception.

Call Mr. Owens.

BEN D. OWENS,

called as a witness by and on behalf of the defendant, in rebuttal, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Ben D. Owens.

Direct Examination

By Mr. Dechter:

Q. Mr. Owens, what is your business?

A. Oil Well abandonment.

Q. And how long have you been so engaged?

A. Since 1923.

Q. And where have you conducted such business?

A. In the south basin of Los Angeles County, Taft, Bakersfield Division.

Q. And have you also abandoned wells in the Del Rey [403] oil field? A. I have.

Q. And are you familiar with the usual and reasonable charge for abandonment of oil wells?

(Testimony of Ben D. Owens.)

A. Yes, I am. [404]

Q. And do you have an opinion as to what the usual and reasonable charge for abandoning an oil well at Del Rey would be about September of 1942?

A. About $800.00.

The Court: No. He asked if you had an opinion.

Mr. Weymann: I move to strike the answer.

The Court: The answer may go out. Do you have an opinion?

The Witness: Yes.

Q. By Mr. Dechter: And what is your opinion as to the usual and reasonable charge for abandoning an oil well in Del Rey in September of 1942?

Mr. Weymann: Just a moment, please. This is objected to as irrelevant and immaterial. There is no question raised here about the abandonment of a well on September 28, 1942. It is not an issue in this case.

Mr. Dechter: Your Honor, there was some evidence brought out indirectly in Mr. Oliver's opinion as to the cost of abandonment although subsequently your Honor did strike that testimony, but in giving his original valuation he testified that he assumed an abandonment charge of $2500.00, and it is my opinion also that this goes to the question asked by the Government as to the economical use of the equipment for the well, to show what the equipment was worth, taking into consideration what they could have gotten for it after [405] deducting the abandonment charge.

(Testimony of Ben D. Owens.)

The Court: I think the point Mr. Weymann is making, if the court understands it, and I may misunderstand it, is that while he estimated it as of September 28, 1942, he was reckoning the cost at the time that the well would have to be abandoned by reason of the expiration of the lease, due to the fact that the well was no longer productive.

Now, is that your point?

Mr. Weymann: That is precisely the point, your Honor.

Mr. Dechter: Your Honor, Mr. Oliver couldn't possibly know what the cost of abandonment would be.

The Court: I just mentioned that. If you have anything further to add——

Mr. Dechter: My purpose was to show what the reasonable charge was at the time and what it has been in October of 1943, so that the court and jury can deduce what the cost of abandonment was. In other words, there is quite a difference between $2500.00 and what we consider the usual and reasonable charge is, and Mr. Oliver testified he never abandoned any wells or had any experience in abandoning wells.

The Court: The objection is overruled. You may answer.

The Witness: What is the question?

The Court: How much would it cost?

The Witness: About $800.00.

Q. By Mr. Dechter: And in your opinion what

(Testimony of Ben D. Owens.)

would be [406] the usual and reasonable charge for abandoning a well in Del Rey in October of 1943?

A. There wouldn't be any difference.

The Court: No substantial difference?

The Witness: No.

The Court: Mr. Owens, suppose that you were called upon to make an estimate of what the cost of the abandonment of a well in the Playa del Rey field would be at the end of the production; that is, that production being estimated from 8 to 10 years. Could you give an estimate of what that would be at such time? Now, is the court's question clear to you?

The Witness: Well, you mean 10 years from now, your Honor?

The Court: From 1942 or 8 years.

The Witness: I don't think there would be any difference.

The Court: You think, your knowledge of what has been the cost over a period of years and from your estimate of what is likely to occur within the next eight or ten years, that the cost would be substantially the same?

The Witness: I do.

The Court: In other words, you wouldn't have anything better to base it upon than what you know at the present time?

The Witness: That is right. [407]

Q. By Mr. Dechter: Mr. Owens, in abandoning a well, will you state to the court and jury what is

(Testimony of Ben D. Owens.)

the life of the oldest well that you have abandoned and pulled casing from?

A. I have abandoned wells that were drilled in 1908.

Q. And the casing that you pulled from those wells, was it sold as casing for resale for used oil wells, or was it sold as junk?

A. It was sold for casing, re-use in oil wells.

Q. In other words, was that casing in good and workmanlike condition, suitable for re-use in oil wells? A. Yes, it was.

Mr. Dechter: That is all.

Cross Examination

By Mr. Weymann:

Q. Mr. Owens, the abandonment costs depend on the terms of the lease, do they not?

A. Well, can I answer that the way I wish?

The Court: Well, you may answer it yes or no, and then you may explain your answer.

The Witness: No, they can't.

The Court: Now, you may explain it.

The Witness: What I mean by that is I never see the leases when I go to abandon a well. All I am asked to do is exonerate the bond. [408]

The Court: Well, does that include removing all the material that is reasonably possible of removal?

The Witness: Well, I just abandon wells and pull the pipe out. I don't remove any concrete or fill any sump holes or anything like that. If the company wishes it, why, I take that as the contract as a whole. [409]

(Testimony of Ben D. Owens.)

The Court: That would be additional?

The Witness: Yes.

The Court: Would that be in addition to the $800.00?

The Witness: That would.

The Court: How much would that run?

The Witness: Anywhere from $800.00 to $1,000.00.

The Court: In addition to the original $800.00?

The Witness: Yes.

Q. By Mr. Weymann: What wells did you abandon in Playa del Rey, Mr. Owens?

A. I abandoned the O. & M.

Q. When was that?

A. That was in 19.. I can't recall the date, I believe it was 1937; and I can't recall the other name of the well there, Hoyt Well No. 8, I believe is what he called it. That is across the highway south of the well in question.

Q. In this estimate of abandonment that you have given you did not include cleaning up the ground, did you?

A. On these two locations I did.

Q. In the estimate of $800.00 which you have given?

A. No, I didn't do that for the $800.00.

Q. That covers removing the physical equipment from the well only? A. Yes.

Mr. Weymann: That is all, Mr. Owens. [410]

Mr. Dechter: That is all. Defendant rests, your Honor.

Mr. Weymann: At this time, if the court please, I would like to make a motion to strike certain testimony from the record.

A Juror: Louder, please.

Mr. Weymann: The plaintiff now moves to strike, and requests the court to instruct the jury to disregard all testimony as to the market value, as of October 4, 1943, of any oil or gas production equipment and facilities, which on September 28, 1942, were located on the leasehold property of the defendant and were then by him used in the production of oil and gas from the producing well known as Blocks Well No. 10, located on defendant's sublease in this proceeding.

The motion is based upon the following grounds:

1st. That under defendant's pleadings he demands compensation for an oil and gas sublease with a producing well thereon as a producing unit; that issue was joined and defendant introduced evidence as to value under that state of facts.

2nd. That separate valuations of portions of a single producing unit, to-wit, of the oil and gas sublease of the defendant with a producing well thereon and of the equipment and facilities connected with said well and necessary to produce the same is not permissible under the law.

3rd. That it conclusively appears from the uncontroverted [411] evidence that the oil well producing equipment, as to which the witnesses, Block, Rubin, and Rush, testified on market value as of October 4, 1943, were absolutely necessary to the continued operation of said Block Well No. 10, and

that without said or similar equipment said well would not be a producing oil and gas well, but a mere hole in the ground lined with 5300 feet of 7-inch casing and 306 feet of 5¾-inch liner.

4th. That it further appears from all the testimony introduced by defendant as to the market value of defendant's oil and gas sublease as of September 28, 1942, that this value was predicated upon the continued operation of and production from Blocks Well No. 10, and the continued use of all of defendant's operating and producing facilities and equipment which were in, on or connected with said well on September 28, 1942.

5th. That to permit a valuation of and an award to the defendant for his leasehold estate with the well thereon as an operating property which was capable of producing oil and gas in commercial quantities over a period of years, after the government took possession, by using the equipment and facilities which were connected with and used on the Block Well on September 28, 1942, and to make a separate and additional award for the market value of the same equipment as of October 4, 1943, would result in a duplication of compensation [412] to the defendant in this: that the defendant would receive the full market value of a producing oil and gas well consisting of the potential future recovery of oil and gas through the well, and of the facilities and equipment necessary for such recovery, and a separate and additional award for the same facilities and equipment which were a part of the pro-

ducing well and constituted one of the elements of its value as such.

Mr. Dechter: Your Honor, this is nothing more than a repetition——

The Court: The court is ready to rule, Mr. Dechter.

I think the motion should be denied and it is denied.

Mr. Weymann: May we have an exception, please?

The Court: Yes. I think, Mr. Weymann——

Mr. Weymann: Pardon me?

The Court: I was just going to say the court didn't have the benefit of all that particular objection at the time the objection was made. That is, the motion that you make to strike is in so much more particularity than the objection was made that the court had to rule upon the objection as it was made and based.

In addition to that, I think by granting that motion there is a certain part of the testimony that you would be asking to strike which was elicited by the plaintiff itself. My recollection on that point is just general; it may not be [413] accurate; but in any event the court denies the motion, and you have your exception.

Mr. Weymann: Thank you, sir.

The Court: Any further testimony to be taken?

Mr. Weymann: No further testimony, your Honor.

I now wish to present plaintiff's request for an additional instruction on the form of the verdict.

The Court: May I ask you gentlemen how much time you think it will take you to argue this case?

Mr. Weymann: I think 45 minutes, if the court please.

The Court: How much time would you like to have, Mr. Dechter?

Mr. Dechter: I think about that estimate. Probably an hour, I would say.

The Court: Considering all of the testimony, I think an hour would be reasonable and the court will fix the time for the argument with a limit of one hour to each side. Of course, that doesn't mean that you have to consume that time, but that should be the outside limit, and I think it is reasonable.

As to the time for the argument, the court will have to examine more carefully the instructions and is required to state the instructions it expects to give in advance of the argument, so the court will excuse the jury today and they are ordered to return tomorrow morning at 10:00 o'clock. [414]

During this period in which they are recessed they will bear in mind the admonitions of the court heretofore given them.

And as for you gentlemen, I think I shall be able to advise you regarding the instructions at 3:00 o'clock this afternoon, if you will return at that time.

Mr. Dechter: May I make an inquiry, your Honor?

The Court: Yes.

Mr. Dechter: I presume the defendant will open the argument to the jury?

The Court: That is usually done.

Mr. Dechter: Am I to divide my time so as to leave enough to reply?

The Court: You may do that. Will you gentlemen be available in the event the court needs some help before that time?

Mr. Dechter: I will hold myself ready.

Mr. Weymann: I will keep myself available.

The Court: The jury are now excused until tomorrow morning at 10:00 o'clock. You will bear in mind the admonitions of the court heretofore given you.

Court is now recessed until 3:00 this afternoon.

(Whereupon, at 10:25 o'clock a.m., a recess was taken.) [415]

Los Angeles, California,

Tuesday, July 31, 1945. 10:00 a.m.

The Court: You gentlemen have seen the form of verdict which the court expects to give?

Mr. Weymann: Yes, I have.

The Court: You have no objection to it?

Mr. Weymann: No objection.

The Court: Your only objection is as to the date of September 28, 1942?

Mr. Dechter: That is correct, your Honor, the same as I announced yesterday.

The Court: Yes, and otherwise you agree to it?

Mr. Dechter: As to the form, I have no objection.

The Court: The members of the jury are present and in their places, is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: Mr. Weymann, pardon me just a moment. After your agreement as to the form of verdict, is it your desire to withdraw your additional instruction?

Mr. Weymann: I withdraw that.

The Court: Very well. The court will just return it to you.

The Court: You may proceed with the argument.

Mr. Weymann: The plaintiff withdraws intended instruction [417] 16-A.

Mr. Dechter: Your Honor, may I ask permission that the Exhibit C of the amended complaint be available to the jury for the purpose of their seeing what the inventory consists of?

The Court: Well, I think it was referred to in the evidence without any objection, and I can see no objection to the jury's having it now.

Mr. Weymann: No objection.

Mr. Dechter: Thank you.

Lady and gentlemen of the jury, first let me thank you for your patience and kind consideration of this case. I don't believe this case is too complicated. There is only one issue and that is, what is the defendant, Sam Block, entitled to receive because the government saw fit on September 28, 1942, to take away from him a producing oil well together with the machinery, equipment and fixtures necessary to operate that well, and took away

in addition a 10 7/12 per cent sublessor's or overriding royalty. The government felt that it was necessary to have this property for a gas reservoir and took this other property as shown on the map which has been offered in evidence.

Now, fortunately in this country we have a provision in our Federal Constitution and in the State's Constitution we have a similar provision that where the government elects to take away property belonging to an individual, it must as a [418] condition make fair and just compensation to that individual, and those words, fair and just, have been used by our Constitution over and over again.

Now, in attempting to arrive at some definition of fair and just compensation, they have also used the term "fair market value." Fair market value ordinarily is what a person who is interested in making or purchasing an investment would give and what a seller who is willing to dispose of his investment would take. [419]

Ordinarily, fair market value is easy to arrive at where there are sales and purchases or a constant market, and in testing the opinions of expert witnesses on values like on commodities, like on wheat or real estate, you have readily available to you the sales in the particular neighborhood, you have available to you what people are asking and what people are receiving; but sometimes it happens, even in the case of real estate; that there are no sales and there are no purchases and property isn't on the market, and the courts have said in those kinds of cases that you arrive at what is an

informal estimate or even an informal guess. In other words, you get all the information that is available and from that information you try to arrive at what the market value would be if there had been a market.

Now, in this particular case we have a peculiar kind of property. It is a property which consists of taking out something from the ground. It is similar to crops to be used in the future, only instead of having to plant those crops the product is already there.

In arriving at market value a purchaser and seller naturally takes into consideration the conditions of the market, the value of the money. Now, for example, it is a simple matter to know that during the '30's the price of commodities and real estate would have been entirely different from what they are at the present time. Likewise, money commanded a much [420] larger purchasing power and commanded a higher interest rate than it does at the present time. Now, those are things that a buyer and seller take into consideration. A buyer takes into consideration how much his money will earn him, how much more will it earn him by making an investment; the seller takes into consideration what will I do with the money? What will the money get me if I sell this piece of property?

We all know that lately, and particularly since the war, everybody has believed and felt that we are in a period of inflation, and people have sought to hedge against inflation. That is indicated by the fact the banks are crowded with money, and

people who own that money are trying to find a place to put it. Why? Because whereas five years ago you could have bought three bunches of carrots for a dime you know what you have to pay for them now. That is the best indication of what the value of the dollar was five years ago and is now. So people are trying to transplant their dollars into something so if the dollar gets cheapened their commodity will rise in proportion.

Now, the best hedge against inflation is buying commodities. One difficulty and one great problem in buying a commodity like wheat, supposing you bought wheat in July for delivery in December, and you expected wheat to go up by December but it didn't go up, well, you have to take that wheat in December, you have to put it in a warehouse, you have to pay warehouse [421] charges. With oil you don't have to do that. That oil is in the ground, you have a permanent warehouse there, and you take it out gradually and you get what the market value of the dollar is over the period of the life of the well.

Buyers have taken that into consideration, and they feel oil is one of the best hedges against inflation.

Now, you have here a conflict of testimony between the witnesses. You have the testimony of Mr. Block that the value of the leasehold to him is $35,000.00. Now, he is not a lawyer and he doesn't know that that doesn't constitute market value. It must be the value to both a buyer and a seller; not just to him alone. But he is sincere in his belief

because he feels that at the rate of 25 barrels a day he would get more than that over a period of 10 years. He hasn't taken into consideration shut-down time, but he feels that when the well is shut down the oil is still there, and when the well is again put on production he gets that oil out. We have his testimony as to the personal property, that it is worth $22,000.00.

Now, an owner has a right to give his testimony as to value, even though he hasn't had experience. But in this particular case Mr. Block has been in the oil well equipment business for a long time, and it appears from his testimony, the testimony of Mr. Rubin, the testimony of Mr. Rush, that there was practically no new equipment available at or about [422] the time the government took this well over, and, therefore, second-hand or used equipment commanded a very high price. And we have the uncontradicted testimony of Mr. Rubin that the O.P.A. ceiling price was about 15 per cent below that of the new price.

Now, we have Mr. Rubin's testimony, an unbiased witness, a man who has been in this business since 1928, that the property described on the inventory plus two additional tanks, which the government inadvertently left off the inventory, and which Mr. Weymann stipulated was on the property when the government took it over, was worth $22,000.00.

Mr. Rush, a man who has been in business for himself for approximately 12 years, I believe he testified, prior to that time was with the General Petroleum Corporation for, I think he testified, 17

or 18 years doing the same thing, buying and selling used equipment, testified that the property described on the inventory was worth $18,000.00, but he did not include the tanks because the tanks were not on the inventory.

Mr. Rubin and Mr. Block both testified that those two tanks were worth $750.00 apiece or $1500.00.

Now, we have the testimony of Mr. Crown. Mr. Crown, an engineer who was with the State of California for 16 years, I believe his testimony was, gave a valuation which I think was ultra-conservative. He testified that the value of the leasehold interest, eliminating any consideration of the [423] personal property or equipment, was $11,000.00; that the value of the overriding royalty interest was $3120.00. [424]

Now, we have that testimony on one side. Then, we have the testimony of the State's or the government's experts. Mr. Wents testified that the leasehold interest is worth $2700.00.

Mr. Oliver testified that the leasehold interest is worth $3150.00. Did they take into consideration what the production had been for 21 months prior? No. Did they take into consideration the fact that the price had already changed from 80 cents to 94 cents a barrel? No, although they knew it had changed, although Mr. Oliver knew that for years the oil industry had been clamoring that the price of crude was too low, considering the cost of producing oil, although he knew we were in a period of inflation.

Now, I think it is interesting, lady and gentle-

men, to see just what the production of this particular well was for two years prior to the time that the government took it over. Isn't that a reasonable thing that a buyer would inquire into if he were buying an apartment house or if he were buying a going business? Isn't that the natural thing that you want to know, what you are going to make from it? How much more should that be true in the case of an oil well where you are relying on the production you get from the well?

Now, I shall take these figures, and with the court's permission, I would like to put these figures on the blackboard to show proof of what the production for the two previous years was. In using these figures I have taken the government's [425] own exhibit which is Plaintiff's Exhibit 8 and which exhibit I believe the court will hand you for your examination. I don't presume, your Honor, there will be any objection?

The Court: If the jury desires to have the exhibits, they are entitled to them.

Mr. Dechter: Very well. Now, in this Plaintiff's Exhibit 8, which is the summary of the actual production by months of the Block's Oil Company Colly No. 10 well, if we start with October, 1940, and go to September, 1942, which would be two years prior to the time that the government took it over, we find these figures: October, 860 barrels. November, 687 barrels. December, 570 barrels. That makes a total of 2117 barrels. Production for the year 1941 is 6614 barrels. For January, 1942,

to September, 1942, we have 4913 barrels. That adds up to 13,644 barrels.

Now, if we take the valuation of Mr. Oliver of 80 cents a barrel, we get $10,915.20. Now, that is 100 per cent of the production. Now, Mr. Block's leasehold interest is only 70 per cent, so we take 70 per cent of $10,915.20 and that amounts to $7,640.64.

Now, Mr. Block testified that the normal cost for operating the well was $50.00 a month. The government's witness, Mr. Wents, testified that it was $100.00 a month, plus 15 per cent of the production or approximately $1380.00 a year. We have got two years here, so we take off two years' operating [426] expense, according to the government's own witness, which would be $2760.00. That leaves $4880.00. That, lady and gentlemen, is what Mr. Block or anybody owning that well would have received for two years prior to the date the government took it over, which Mr. Oliver and Mr. Wents want you to believe was worth only $2700.00 from Mr. Wents' standpoint, and $3150.00 from Mr. Oliver's standpoint.

Now, so far as the 10 7/12 per cent interest is concerned, that is gross overriding or sublessor's interest, and if we take 10 7/12 per cent of $10,915.20, that would be $1155. That is what the 10 7/12 per cent would have earned for the two years previous to September of 1942 that both Mr. Oliver and Mr. Wents say was worth approximately $131.00.

Now, in addition, to illustrate how zealous the

government's witnesses were to make a showing for a very wonderful client, the government, who undoubtedly will have a lot of business for them, Mr. Oliver knew that the production for the year of 1942 was 7255 barrels, but in his estimate of what the production would be for 1942, he put 6400 barrels, a difference of 855 barrels. Now, in these cases these experts are trying to give you what is supposed to be a reasonable estimate of what the well would do.

Now, where they had a chance of checking their estimate and they knew their estimate was deficient, did they make any attempt to correct it? No. [427] In the year 1943—incidentally, Mr. Wents only estimated 1942 production at 6133 barrels although in June, 1945, he knew that the production for 1942 was 7255 barrels. They estimated, Mr. Oliver estimated the production for 1943 at 5800 barrels. Yet, they had six months' production for 1943 which showed 4124 barrels, in other words almost practically more than 80 per cent in the first six months of what they estimated for the full year.

Now, another thing, they give an option, Mr. Oliver, for example, that the well and the equipment is worth $5650.00. In other words, he gives a valuation of $2600.00 for the equipment. Now, lady and gentlemen, you will all remember that when his Honor asked Mr. Oliver could he give the fair market value of this equipment on September of 1942 he said no, he couldn't give that valuation.

Mr. Wents, when he was asked the same question,

said he didn't figure it that way. He figured what the salvage value would be 10 years from now.

Now, the government is taking over a going well. They wanted a going well. They could have condemned just the land alone and said to Mr. Block, "We don't want your personal property and equipment. You can take that off." But, they wanted a going oil well and you can't have a going well unless you have all this personal equipment, and they wanted it installed so as to use for an oil well and that, lady and gentlemen, is the value that you have to put on. What would [428] it have cost on September 28, 1942, to replace that equipment and install for use to operate this oil well?

Now, you have the testimony of three men, two of them unbiased, all of whom have been in this business of buying and selling equipment, not like Mr. Wents or Mr. Oliver whose experience has been like most of us in buying clothing or buying shoes, or even if you are in the business of buying something once in a while, and then they don't have that experience directly. It is merely that they recommend as an engineer, and we all know that most of these people have purchasing agents or do the business themselves. Now, some of them could testify as to any purchases that they made, going down and shopping, but even so, they admit they aren't in the business. [429]

Now, here is equipment worth $22,000.00 according to Mr. Rubin and Mr. Block; worth $19,500.00 according to Mr. Rush, if you take his testimony of $18,000.00 and add $1,500.00 for the tanks; and

they want you to believe that the value of the well and the equipment is $5,650.00. It would have been much better for Mr. Block to forget about the oil well and move his equipment off and sell it, because according to Mr. Rubin he would have gotten the new prices for it less 15 per cent, and there is no contradiction of that testimony.

Now, is it logical to assume that a person would continue to operate an oil well and leave an investment of $22,000.00 or $19,500.00, whichever you want to use, for 10 years, when at the end of 10 years he won't even get but a small fraction of that investment back? That is forgetting about the fact that it cost a tremendous sum of money to drill this well originally. Even Mr. Oliver testified that the replacement value on September 28, 1942, would have been $19,800.00, or approximately close to $20,000.00, but he qualified that by saying "new." We will take off 15 per cent, because it was used, because he himself admitted, and so did our witnesses, that new equipment wasn't available, that major oil companies who always buy new were forced to buy used because there was no new equipment available. Is it logical to assume that a person would leave, even according to Mr. Oliver, $19,800.00 worth of equipment on a well for ten years to get back $5600.00? [430]

We have the testimony that all it would have cost Mr. Block to abandon the well in 1942 and to clean up the premises would have been $800.00 for abandoning the well and another $800.00 or $1,000.00 for cleaning up the premises. That is, like filling up the

sumps where the oil is stored, knocking out cement and making the premises the way they were originally.

Incidentally, Mr. Wents, who is not, in my opinion, qualified as an expert, was asked, however, on cross examination about only four items, I believe it is, and they appear on page 4 of the inventory. Yes, four items. Let me amend that. Four items which appear on page 4 and the derrick which appears on page 3. And those items according to his figures come to $13,622.00, those items alone. In other words, he testified six cents a foot for 4950 feet of three-quarter inch sucker rods, seven cents a foot for 1500 feet of seven-eighths-inch sucker rods, 25 cents a foot for 6487 feet of tubing, $1.25 for seven-inch casing and $3400.00 for the derrick. And when you examine the inventory, you find in addition the inventory consists of pumping equipment, engines and numerous other items.

Now, another point. Mr. Oliver was questioned about this discount factor, and I think it is simple knowledge when you discount money that you receive on a future date down to the present date, that by that is meant the same thing as the insurance companies do when they discount annuity rates and [431] things of that kind; they figure what according to the prevailing rate of interest it would take for one dollar today to amount to so much in 10 years. Mr. Oliver apparently found it difficult to say yes or no to a question asked by me, so he had to argue. He said no, it wasn't exactly the money rate. In other words, he realized, apparently, that

an eight per cent discount factor was not at all the usual rate prevailing in September of 1942. You members of the jury know what you received for your money in the bank; you know what you receive when you try to make an investment, and you all know that four per cent would be a liberal rate at the present time. In other words, whereas in the '30s real estate loans were made on a seven or eight per cent basis, you can get any building and loan association or any bank or insurance company to make them on the basis of four per cent at the present time. So he has to explain that, and he says, "Well, I took into consideration the hazard involved." Well, that would be fine, that would be a logical explanation if he adds to the prevailing rate of four per cent another four per cent for a possible hazard. But does he stop there? No. On top of that, after he gets through discounting eight per cent compounded annually, he takes off approximately 37 per cent in addition from the amount that remains. In other words, to give you an illustration, let's take the leasehold estate. He says the value of the leasehold estate after discounting [432] the eight per cent compounded annually is $4980, but he says the fair market value is $3150.00, or he takes off an additional $1830.00, which amounts to approximately 37 and a fraction per cent. Now, he does the same thing with the overriding royalty interest, which the 13 1/3 per cent, he says, after using the discount factor of eight per cent compounded annually amounts to $2760.00; he takes off $1750.00, which amounts to approximately 36½ per cent.

Now, you can't blow hot and cold. Either one thing is a discount factor and the other thing is a hazard. But what does he do? If you take the difference between four per cent and eight per cent and compound it annually for a period of eight years, as he did, it would amount to 37 per cent or more over the period of eight years. So, in other words, he is deducting approximately 37½ per cent twice when he uses the eight per cent factor, when you take into consideration the prevailing money rate.

Now, they say they take into consideration the hazard involved. Now, there is nothing in this world that doesn't involve a hazard. Money in the bank is lost because a bank fails; a person has a building like the Empire State Building and along comes a bomber and destroys two stories of it. Nobody ever expected anything like that would happen. In other words, there are hazards which are unexpected, but which a purchaser or investor considers so extraordinary that he [433] doesn't take them into consideration.

For example, the railways during the '20s and '30s bought railroad bonds, paid par, and they are supposed to pay four and five per cent per annum; but during the '30s you could have bought them for from 15 to 30 dollars on the thousand, so you would have gotten something like 20 per cent interest on your money. But now they are back to par and above par and you can only get approximately three or four per cent on second-grade railroad bonds, which goes to show that even railroads with all their

investment counsel sometimes can't foresee everything that takes place, but they take what is a normal as a guide. Nowadays persons who buy royalties and buy oil rights buy it principally as a hedge against inflation.

For example, in a leading textbook on appraisal by Paul Paine he says, at page 164:

"During the recent years many of the largest transactions in royalty interests have grown out of buyers' quests for hedges against the adverse effects of inflation. This type of buyer is not concerned with an early payout and early earning, but is much occupied with the estimate of recoverable oil in the ground."

Now, another thing I asked Mr. Oliver was did he take into consideration possible increases in production. No. [434] But he did admit there were methods of increasing the production; he did admit the efficiency of operating oil wells has increased.

And in another book by Dorsey Hager, Fundamentals of the Petroleum Industry, published by McGraw-Hill Book Company in 1939, at page 399 the author says:

"A good royalty comprises the following speculative features above its safety in yield:

"1. There is a chance of a rise in oil prices.

"2. There is a chance of higher oil recovery than the original estimate because of engineering efficiency in future years.

"3. There is in many oil fields the possibility of deeper pay zones which when tapped may more than double the value of the royalty."

Now, certainly, it seems to me, that a buyer in the oil business would certainly take into consideration that sooner or later the price of oil was going to be raised. All he has to go by is to go by past experience. In the last war oil went to $4.00 a barrel. Nowadays we have hearings in Congress in which they ask Congress to force the OPA to lift its ceilings so as to increase the price of crude oil.

Mr. Oliver knows about those things. He knows about all these articles, yet he doesn't take that into consideration.

Now, let's take the stocks of the guilt edge oil companies [435] like Standard Oil of California, Standard Oil of New Jersey, why, when they show an annual income of three or four dollars a share a year it is supposed to be phenomenal, and their shares sell for around $40.00, $50.00 a share, and Standard Oil when it pays a dividend of $2.00 a share, as it has up until about a year ago when it, I think, increased it to $3.00 a share, people thought that was a pretty good dividend on that stock.

In other words, oil companies, if they figure on getting 10 per cent return, gross return on their money, they think it is a pretty good return.

Now, let me ask you this question: Do you ever hear of a major oil company or a large oil company ever selling production? The only time you ever hear of that is when they go into bankruptcy or into receivership. Oil companies, as a rule, keep their wells and operate them until they get the last drop of oil out of them.

Lately there has been a seller's market in every-

thing, not alone oil; in real estate, in any kind of commodity. It is the seller who lays down the price and the buyer can take it or leave it. And you can remember only four or five years ago when real estate went begging. Now, that is particularly true in the oil industry.

At the opening of this trial the court asked both sides to stipulate that instead of waiting on cross examination the [436] parties' experts could give testimony as to sales or offers on direct examination, and we both stipulated. Mr. Oliver and Mr. Wents never sold or bought a well in del Rey. They never gave any evidence of any particular sales or particular purchases. And I think you can draw the inference from that that it was impossible for them to do it because the only time a sale takes place is when a company goes bankrupt, a person dies and they have to pay inheritance taxes, or some other emergency comes along, because people who buy oil property buy them with the idea of getting their money back gradually over a period of years.

And, talking about taxes, here is another advantage that an oil buyer considers, and that is when he buys an oil royalty, when he buys an oil property, 27½ per cent of the income from the property is not subject to income taxes. That is an allowance that is made by the government for what is called depletion, and it is an arbitrary allowance. Naturally, to purchasers of oil properties—and most purchasers of oil properties are in the heavy tax bracket—that means a lot to them that 27½ per cent of that income is not going to be subject to 60 or 70

per cent income tax rate. The government's witnesses gave that no consideration at all.

Now, it is my contention that the opinions of the government's witnesses were so low and so unreasonable that you members of the jury would have the right to disregard the [437] same entirely.

Another thing I want to call to your attention is that on this curve that Mr. Oliver drew, you have noticed from about January of 1940 down to July of 1943 that there wasn't much fluctuation, and if you take Plaintiff's Exhibit 8 and examine it, as I hope you will all do, you will find that the production was fairly steady during that period, that there were some months that were a little bit higher than others, and Mr. Oliver admitted that that might be due to the fact that there was a shutdown because maybe a joint of pipe had to be repaired, maybe a valve had to be taken out and put back; and nowadays when that is done you want to shut down more than usual because it is just as difficult to find replacements on that type of oil well equipment as some of you members of the jury have found in finding replacement parts for your cars. [438]

I would like the privilege, your Honor, of having the balance of my time to reply. Thank you.

The Court: Mr. Weymann, I think the court will take a very short recess at this time. The members of the jury will bear in mind the admonitions of the court. Return when called by the bailiff.

(A short recess was taken.)

The Court: The jurors are all in their places, is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: Proceed, Mr. Weymann.

Mr. Weymann: May it please the court, lady and gentlemen of the jury, Mr. Dechter, Mr. Dechter as an experienced oil attorney has presented, I am sure, the claim of Mr. Block in the most favorable possible light to his client. That is his right. That is his obligation. Mr. Dechter's obligation is to Mr. Block, his client, to endeavor to secure for him a verdict as high as possible as my obligation is to the government of the United States and through it to the people of the United States.

We are sometimes prone to think of the government as a distant, impersonal entity so that we are apt to forget that the government after all is nothing more or less than an agency through which the people transact their common affairs and do [439] their common business.

In arriving at a verdict in condemnation suit, I think a jury has as difficult a task as it has in any possible case in which it is called upon to sit, for this reason. In the ordinary case the question presented to you usually is did he or didn't he, or how much? But, in this case, you have to ascertain a state of mind, not a state of mind now, but a state of mind as of the date which the court will give you in its instructions. That is to say, you have to place yourselves in the state of mind or in the position of a willing seller and a willing buyer as of September of 1942 who are informed of all of the facts favorable and unfavorable which you conclude

the evidence in this case has disclosed, and then determine what those two people, exercising intelligent judgment, would determine they would agree upon.

Now, Mr. Dechter has put some figures on the board. I am glad he did that, for this reason. He took 24 months of production prior to the time the government took the property. He took from the exhibit the cost of production and then deducted $50.00 a month. Why did he deduct $50.00 a month? Under examination by Mr. Dechter of Mr. Block, he was asked what is the cost of production per month, and Mr. Block's answer was $200.00 a month. Now, why didn't Mr. Dechter tell you that? Did he think perhaps you had forgotten the evidence? It is here in the record. Now, use $200.00 a month, [440] the figures given by Mr. Block, and apply it to that illustration and see where you get.

Let us take the testimony of Mr. Block. In his opinion the value of his leasehold estate without the necessary equipment to operate the oil well was $35,000.00, the value of his overriding royalty was $6,000.00, and his estimate of the value of the equipment $22,000.00. How did he arrive at that? He arrived at it by estimating a life of 10 years of 365 days each and arrived at 3,650. Can you imagine an oil well operating 3,650 consecutive days? And he estimated it at 25 barrels a day, although the estimate was that in September of 1942 he was actually receiving less than 17 barrels a day, 436 barrels to be exact in September of 1942.

When the court asked him how he was to get that oil out of the ground, he said he had the equipment,

the equipment was there, that he intended to use that same equipment to get that oil out of the ground. He was asked whether the well was making water. Oh, he didn't keep track of the water, but it was making water all right, and the more water you raise in proportion to the oil, the more it would cost. Then, he estimated for the return, his operating profit, at the rate of 94 cents a barrel, although for a number of months at that time he was only receiving 75 cents a barrel.

He was asked whether he had the records of the production of that well. He said, "Well, I was asking my man and he said [441] he lost them." Well, I am unable to understand how a shrewd businessman like Mr. Block, who can meticulously calculate his estimate of the value of that well down to $60,032.50, who arrives at such close figures, is so apparently careless about an important matter such as his records. Perhaps you can understand why.

Put yourselves in the position of a purchaser informed of all the facts and suppose a man comes to you and says, "I have a producing oil well which in September of 1942 in the last month produced 436 barrels of water. I have to shut the well down sometimes twice a year to change the rods and tubing. They break. I have repairs and so forth. I estimate that that well would produce 25 barrels a day for 10 years from now on, and I want $35,000.00 for it. Now, it is true, of course, that my engineer estimates total income I will get in those 10 years is only $14,000.00, but I want $35,000.00

for it, and I have the equipment to produce that well out of which you may recover that $35,000.00 with profit.

"So, if you can keep that well going on production and you are lucky, and you want to take the gamble, keep it going for 10 years at 365 days a year if it produces that long, I will let you have it for $35,000.00, but you will have to use the equipment in order to get that. So, I will sell you that equipment for $22,400.00 and you will have an investment of about $57,000.00 out of which my engineer estimates you can recover a maximum of $14,000.00.

What would you say as an intelligent buyer using intelligent judgment?

To give you an illustration also, suppose I would come to you and say, "I have an automobile that I want to sell you."

You would say, "How much do you want for it?"

I would say, "I want $2,000.00 for it."

"Does it run?"

"Well, it will run for 10 years. It has got an engine in it to make it run."

"Well, $2,000.00"——

"Oh, yes, but in addition, that engine is in there. That is my engine, too. So, you pay me $2,000.00 for the automobile and you pay me—$1,000.00 for the engine necessary to operate it."

What would you say to a deal of that kind? That is the proposition that Mr. Dechter is advancing in behalf of Mr. Block here. Mr. Block is in the

position of a man who wants to have his cake and eat it, too, with lots of icing on it.

Then, to support his contention of $22,000.00 for the value of that equipment, he brings in Mr. Rubin. You have seen Mr. Rubin. You have heard him testify. You can judge as to the value of his testimony. By a strange coincidence his valuation of that equipment is just the same as Mr. Block's. [443] How did you arrive at it? He was shown a copy of the inventory. He looked it over and then estimated that the value of that equipment was $22,000.00. He didn't go down and examine it. He didn't go down and look at it. He looked at the inventory and arrived at the same conclusion that Mr. Block did. I think you will agree that his testimony as to that value has about the same worth as that of Mr. Block.

I am not criticizing Mr. Block for wanting all he can get. That is his right. We come now to Mr. Rush. Mr. Dechter, in his argument, mentioned $18,000.00 or $19,000.00 to you as Mr. Rush's testimony, but when he was asked how much of that equipment could actually be recovered, how much of it could actually be sold, it was found that there were some 5300 feet of casing in the hole which would have to stay there, and some 306 feet of liner which would have to stay there, and after reducing that, he arrived at a valuation of $12,260.00, not $18,000.00. Why didn't Mr. Dechter tell you that?

But, taking this $12,260.00 and assuming that a

buyer would take that into consideration, that would mean and remembering that Mr. Rush testified that the well could not operate without that equipment which he valued at $12,260.00, in other words, if you hadn't any equipment, you might have plenty of oil in the ground, but if you couldn't get the oil out, it would be just like an oil lease on the moon. Oil in the ground [444] isn't worth a dollar until you get it out as far as sales is concerned.

But take this $12,260.00. That means that if anybody bought that well, and assuming that that valuation was correct, in order to get $13,494.00 which Mr. Crown estimates is the ultimate recovery, and he is a petroleum engineer, over a course of 10 years, in addition to $12,260.00, the purchaser would have to make an investment of $11,000.00 which is the value of the lease. That amounts to an investment of over $23,000.00.

I think you will agree that no one exercising intelligent judgment would make an investment of $23,000.00 in order to get back over the course of 10 years $14,000.00 in addition to whatever he might be able to sell the equipment for for salvage at the end of that period.

If a man must go into the oil business, he can buy many good oil stocks. He would not put his eggs in one basket and run all the risks and hazards incidental to the operation of a single oil well when if anything happened to it, the hazards of the tubing or the rod breaking, getting stuck in the hole and you can't get it out, that would end your

oil well and that would be the end of your investment.

Putting together the estimates of these two witnesses, Mr. Rush and Mr. Crown, of whose sincerity I haven't any doubt, you find you have got a $23,000.00 investment. Now, it is [445] utterly fantastic that an estimate of $23,000.00 to get back $14,000.00 is good business. Either Mr. Rush's estimate is way off or Mr. Crown's estimate is way off, or more probably both of them. It just doesn't add up. That is the long and the short of it.

Let us go to Mr. Crown. Mr. Crown had one year of experience in advising private clients as to values. He had two of them for a year, two more for somewhat less than a year, and one for a period of a couple months. I hope that his clientele will increase. During that year he made one appraisal and his client refused to buy some property on the strength of that appraisal. Whether his judgment was good or not, we will probably never know.

Mr. Crown made a number of errors of omission and commission in arriving at his estimate which I want to point out to you, and in all fairness I think they may be attributed almost entirely to the lack of business judgment and experience which comes only from long experience in that line, of course, which Mr. Crown obviously has not had.

On his purely technical engineering estimate of the amount of oil to be ultimately recovered, he comes very close to Mr. Oliver's estimate. Mr. Crown says the ultimate recovery in 10 years for 100 per cent of the interest was 40,300 barrels. Mr.

Oliver puts it at 37,900.00 for eight years. So far as the technical engineering features are [446] concerned, Mr. Crown's estimate is all right, but when it comes to exercising judgment as to the value of that, when it comes to ascertaining the facts which go into the value of that, Mr. Crown is somewhat deficient. For example, he assumed that the price of oil for the entire 10 years would be 94 cents a barrel although as a matter of fact for six months of that 10 years it was only 75 cents a barrel.

Now, much has been said here about the increased price of oil, about oil increasing in value. War conditions have something to do with that and I doubt if anybody either now or in 1942 expected the war to reasonably continue for the entire period of 10 years. Production has been stimulated and increased and we may reasonably assume or take into consideration at least after the war ceases just what an intelligent buyer would take into consideration. What is going to become of all of this tremendous stipulated and increased production of oil after the war demands cease, to which Mr. Oliver referred in his cross examination? As our Supreme Court said "War earnings certainly cannot form a sound basis upon which to forecast the value of an enterprise."

But, Mr. Crown goes right through at 94 cents a barrel for 10 years and assumes it is going up and up. Mr. Dechter said that after the last war oil sold at $4.00 a barrel. Mr. Oliver testified $3.50 a barrel, but let us take $4.00 a barrel. [447]

Suppose a man bought it on the strength of $4.00

a barrel. Would he have exercised good judgment? Hardly, because it subsequently declined to 90 cents a barrel and here to 75 cents a barrel. All those things a prospective buyer would take into consideration. The temporary increase and the inevitable decline that follows. He didn't take into consideration the water content of the fluid raised.

The diagram that was introduced into evidence here, I am going to ask you to take that and consider it and note the constant climb of the water content of the fluid and the progressive decrease of the oil content and carry those lines out as an intelligent buyer would and determine what would be the ultimate fate of that. Mr. Oliver drew a diagram on the board showing how water incursion gradually kills out a well so that the well goes to water and has to be abandoned. You have the constantly rising water production there. Would a prospective buyer take that into consideration? Is that one of the hazards?

Mr. Crown didn't take it into consideration in making his estimate of market value. He was asked if there was a pipeline charge for piping the oil to the purchaser's refinery. Well, he said he didn't know just how they would handle that. I am quoting from the record. He said, "If they had to pay a trucking charge, why it might have been taken off the price of the crude. It would lower the price of the crude." He didn't [448] know if there was a a trucking charge. He didn't know if there was a pipeline charge. He didn't take it into consideration. All of this is evidence of his lack of experi-

ence which would enable him to form an intelligent judgment as to the value of that property, something that a buyer would want to know on the date that this hypothetical purchase and sale was made.

Now, here comes the most amazing thing of all. He was asked if he had any record of the gas production for which three cents was added to the price. He said he didn't. He had only the value of the gas and gasoline equivalent per barrel of oil which was furnished by Mr. Block, and he based his estimate on the information given to him by Mr. Block,—Mr. Block, whose man had lost his records, by the way, and they couldn't be found, again evidence of inexperience because an engineer in estimating value would be like a bank examiner coming into a bank, or a public accountant, to examine the records of the business to determine how you stand, and would go into the records. He wouldn't ask you, "Well, how many bills payable have you? How many receivables have you?" He would go and make an investigation. He wouldn't depend on you. That is what Mr. Crown did.

When he was asked if he knew of any instance where anybody would pay approximately $11,000.00 which is his value of the oil lease for an oil property out of which in the course of 10 years he could recover approximately $14,000.00, which was [449] his estimate of the ultimate recovery, or a little bit less than that, he said he couldn't give you any specific examples, but such people exist. Well, maybe so, but I doubt very much if they are allowed at

liberty unaccompanied, and their families usually have guardians appointed for their estates, in an instance of that kind.

When I asked him whether in his opinion an informed buyer would be willing to pay $3,120.00 cash in order to receive $3,971.00 over a period of 10 years from royalties in the Playa del Rey field, which are his estimates of the ultimate receipts by the royalty holder and his estimate of the cash value of that, do you remember what his answer was? I want to recall it to you. "Would a purchaser, an informed purchaser pay $3,120 cash in order to receive $3,971.00?"

"That question, I would answer no." A perfectly frank answer. Of course he would not. [450]

There you have the testimony of the defendant's witnesses as to value. One of them repudiates a portion of his testimony as to value; the other added together to make a producing oil well present an impossible situation of taking $23,000.00 for $14,000.00 of recovery, including all of the hazards.

Much has been said about the government's witnesses attempting to minimize these prices, these returns. Oliver estimated the total future production at 39,700 barrels. He put the value of that future production, the market value, considering all of the hazards, at $3,150.00, and adding the value which could be realized off the equipment to produce that $3,150.00 at the abandonment of the well gave you a total value of $5,650.00 for the operating interest. He used the same engineering method

which Mr. Crown used but didn't have the judgment to apply, but which Mr. Wents used and then arrived at a fair market value for the overriding royalty of $1,750.00.

Mr. Dechter mentioned something about the discount factor he used, and why he reduced that to this apparently low figure of $1,750.00. Because he considered that an intelligent buyer would consider the risk which Mr. Dechter brought out in his cross examination that a well may be on production producing a large quantity of oil and it may happen that the operator may pull the tubing for reconditioning, have a strand stuck in the hole which he is unable to get out. He was asked whether that frequently happens, by Mr. Dechter, and he said he thought that was right. All of those hazards.

Now, to compare the hazards of losing an oil well, all of your eggs in one basket, the mechanical difficulties, the fluctuations in the price of oil up and down, with a return from a mortgage or from real estate, seems to me the height of the fantastic.

Talk was made of a buyer's market. Was there a buyer's market in September, 1942? There is a buyer's market now. Or, rather, seller's market now. But we all know that those conditions change radically after the abnormal conditions in which we live change. We know the depression that followed the boom of the last war. Many people expect the same thing after this war. Let's hope it doesn't eventuate. But an intelligent buyer takes those factors into consideration. In other words, an intelligent buyer takes every adverse factor of the prop-

erty into consideration and hedges against that. He is not going to take that risk unless his profit is sufficiently large. He lets the seller take that risk.

Coming now to Mr. Wents. I feel sure you were impressed not only with the sincerity, but with the comprehensive grasp that Mr. Wents had of his subject. That was amply demonstrated to you, I think, by the kind assistance of Mr. Dechter on his cross examination. He showed a detailed knowledge of what he was talking about, which even exceeded that which I [452] anticipated he would show. He used the same engineering approach that the other two engineers used. It was the custom and the standard by which engineers valued property and gave their advice to clients on which the clients relied to buy and sell. He arrived at an opinion of the market value of the royalty at $1168.00 compared to Mr. Oliver's of $1388.00. He valued the 70 per cent operator's interest at $5690.00, compared to Mr. Oliver's valuation of $5650.00, making a total difference of less than $300.00 in their total valuations.

Now, did they get toegther to connive at this, to reduce Mr. Block's valuation? You have got to reach a determination as to where the truth lies between these widely divergent opinions as to value, and to reach that determination you have to bring to bear not only a consideration of the evidence which you believe, but your common knowledge of the ordinary affairs of life and your knowledge of human nature and motivation. Men do not exaggerate or distort facts through sheer and deliberate

falsification nearly as often as they do through conscious or unconscious bias.

You know very well that we all find it easy to believe or compel ourselves to believe the things that we like to believe because they serve our self-interest and we find it very difficult to believe those things which are obviously true but which we don't wish to be true. [453]

Now, in determining where that unconscious or conscious bias, as the case may be, if such exists, is, ask yourself this question: Who has the most to gain or to lose by exaggerating or minimizing those factors which enter into the value of this property? Is it the government's engineers? They have been engineers giving valuations to corporations and to banks and to oil operators for 15, 20 years, and their employment by the government will very soon be over, but they will go on having their reputations to sustain. Have they any incentive for a fee to distort or pervert the facts? Do you suppose, will you assume that your government by any connivance or device will seek to deprive Mr. Block of a few thousand dollars which justly should come to him? I don't believe you are going to conclude that. I don't believe you are going to conclude that the government's witnesses have expressed anything but their honest opinions based upon long experience and upon sound judgment. It doesn't make any difference to them whether Mr. Block gets $5,000.00 or $5,000.000.00, except that they are part of the general public, of course.

When this case is given to you by the court you will in effect be handed a blank check on the United States Treasury, which you will fill out by your verdict and determine the just amount that Mr. Block is to receive. Determine it by what you think a willing seller and a willing buyer, knowing all of [454] the facts which were brought out here would arrive at in a fair deal. I have the right to ask you to take all of those things into consideration, to exercise your own judgment, justify the trust that is imposed in you by bringing in this verdict. More than that I am not asking you. Give Mr. Block every dollar he is honestly entitled to, but don't give him one dollar more for any other consideration in your sound judgment.

My time is almost up. You have had a complicated trial to listen to and perhaps at times it was tiresome one. I appreciate that. I want to thank you for the close attention that you have given to this matter and ask you to remember all of the facts that were brought to your attention when you retire to the jury room to deliberate our matter. Thank you.

Mr. Dechter: May it please the court, lady and gentlemen of the jury. We are not here to secure any exorbitant award for the property that has been forcibly taken away from Mr. Block. I join wholeheartedly in Mr. Weymann's statement. All we want is fair and just compensation, and we appreciate the privilege that that can be left in the hands of twelve impartial jurors. That is one of the blessings of our system of government.

Now, Mr. Weymann has referred to the figures on the blackboard. He hasn't commented very much on those figures. I [455] think through inadvertence he said I used as an operating cost or deduction $50.00 a month. I refer to the fact that Mr. Block had testified that his normal operating expense was $50.00 a month, but the operating costs that I had used on the blackboard in making that deduction was the operating cost given by his pride and joy, Mr. Wents, of $1,380.00 a year or a total of $2,760.00 for two years. Those are the figures I have used, and I certainly think that any buyer knowing that for the previous two years that amount would have been netted would certainly have paid a higher price than the value placed by the government's witnesses.

Now, the government's own exhibit, Plaintiff's Exhibit 8, also shows that for the period October, 1942 to June, 1943, a period of nine months, the total production was 6466 barrels. You divide that by 9 and you get 718.5 barrels; you multiply that by 12 months and you get 8622 barrels; you multiply that by 97 cents a barrel and it will give you $8363.00; 70 per cent of that would be $5854.00; take off $1380.00 operating expense for a year is $4474.00; 10 7/12 per cent overriding royalty interest would be $619.55. Now, the government's witnesses made their appraisals when they had a chance to check against their guesses, which they were supposed to place themselves back in September of 1942. After all, these curves and guesses aren't supposed to be just something out of the air; they

must have some analogy to the facts, and when [456] later on the facts appear, it seems to me they should be taken into consideration. And I believe the government just disregarded those facts entirely in making their appraisals.

Now, Mr. Weymann starts out by attacking Mr. Block about the fact that he didn't have certain records pertaining to the well operation. Mind you, this well hasn't belonged to Mr. Block for three years. Mr. Block didn't operate the well himself; he had an operator. But fortunately for Mr. Block the law of California requires him to make certain reports under oath to the Division of Oil and Gas, which reports if made falsely are a crime, and we gave the government access to those records. Mr. Block still has his accounting records showing how much he received in dollars and cents, which were made available to the government witnesses, so there hasn't been any attempt to deceive the government, and both the government's witnesses and our witness had access to those government records.

Now, Mr. Weymann also seems to endeavor to ridicule Mr. Crown for using a figure of three cents a barrel equivalent for the gasoline and gas produced from this well. Well, if we look at Mr. Oliver's report, he used 2.8 cents a barrel instead of 3 cents a barrel. Not very much difference between those two as to the gasoline and gas content.

Mr. Weymann also seems to make much ado about the water content. You will recall Mr. Oliver on

cross examination [457] admitted that in Signal Hill for a long period of time wells have produced in very profitable amounts which have produced at the same time 80 to 90 per cent water.

Now, all we have to do is look at the production records and we can see there hasn't been any material fluctuation in the amount of oil produced in July of 1940 and in July of 1942. Mr. Weymann tried to take September, which happens to be a month where maybe by reason of some repair or shutdown the production was a little bit less than the previous month. You can't take one month and take it by itself, you have to take the average; and if you average out the production from January, 1940 down to July, 1943, you will find that it is very settled production. And if you examine this curve that Mr. Oliver has prepared, which is nothing more than a graphic chart of the production in barrels, you will find that the gas production has likewise been very settled. In other words, the gas production follows almost a parallel line with the oil production, and you will find that the gas production in September of 1942 was even higher than it was in 1940 before the government took it over, and you will find in this oil curve that some months the production goes up to over 800 barrels a month, and some months it goes down to 400; but if you average it up you find it is pretty well settled.

Mr. Weymann used an analogy of an automobile which I [458] don't think has any similarity at all, although we all know that second-hand auto-

mobiles that we paid for three or four years ago are like my Mercury that I paid eleven hundred some dollars for in 1940, I can get something like 25 per cent more for it now after using in three or four years. That is not an unusual condition. But I think the government shouldn't have the right to say that because a certain amount of this casing 5300 feet, cannot be removed, that they ought to get that casing for nothing. They want an oil well, and, mind you, Mr. Wents testified that he went down to the well for the first time for appraisal purposes in June of 1945 and this equipment was still being used and this well is still being operated. In other words, they didn't want a dry hole, they didn't want an abandoned hole, they wanted something they could operate with the necessary equipment, and it has a value to them like it had to any other buyer, and it is for you to consider what a buyer would give for a going oil well, not for something to dismantle and take apart.

To me the analogy would be somebody leasing certain premises for a factory and he installs certain machinery and equipment, and certain items have to be installed in such a way that they can never be removed; the owner of that factory sells out the lease and the factory, does that mean that because at the end of 10 years he can't remove certain articles that the buyer can say to him, "I will disregard the value of [459] it"? He is going to get the benefit of that use for the balance of the life of that lease. And that is exactly the situation here.

Mr. Weymann mentioned about taking advantage of war conditions. We are not here to take advantage of war earnings. We are complaining of the fact that the war is depleting the oil reserves at a greater amount than normally they would be depleted, and therefore by reason of that the oil reserves are less than they normally would be, and it is a simple equation that when the supply is reduced the price of the demand goes up. That is the situation here. The war hasn't helped the oil industry; it has depleted a natural resource. It has done that to all our natural resources. [460]

Also a buyer, in buying a piece of property would take into consideration past history. What does past history show you? That after every war in world history for an average period of about 10 years there has always been a boom or inflation, and that is what people generally expect after this war. They don't expect wages to go down. They don't expect prices to go down, and that is what a buyer would take into consideration and would have taken into consideration in 1942.

Now, something Mr. Wents brought out is very pertinent. He has been recommending to clients of his to drill wells now that cost about $30,000.00 to get 30 barrels a day production initially. I think that is a very important thing to remember. If somebody will start from the grass roots and drill a well and know they can only expect 30 barrels a day to start off with and the production tapers off from that, that shows you what the oil market and condition is at the present time.

Now, Mr. Weymann has said that a buyer takes into consideration adverse factors. I agree with him, but the buyer does not, like the government witnesses, shut his eyes to all favorable factors. He takes the favorable factors into consideration as much as the adverse factors and weighs them both and I feel that you members of the jury will do the same thing, and I am frankly content to place the matter in your hands, [461] and all I ask for my client is a fair and just compensation. All I ask is that you give him in money the equivalent of what he should fairly and justly have by reason of this property being taken away, and I am satisfied to leave it in your hands.

The Court: The court will take a recess at this time. It is not quite 12:00 o'clock. Do you think you could all be back here at 1:30? Would that give you enough time?

(No response.)

The Court: Very well. The court will recess at this time until half past one this afternoon, and you will bear in mind the admonitions of the court heretofore given you.

(Whereupon, at 11:55 o'clock a. m., a recess was taken until 1:30 p. m. of the same day.)

Los Angeles, California,

Tuesday, July 31, 1945, 1:30 p. m.

The Court: The jurors are all present and in their places; is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: Members of the jury, it becomes my duty as judge to instruct you in the law that applies to this case, and it is your duty, as jurors, to follow the law as the court gives it to you. On the other hand, it is your exclusive province to determine the facts in the case, and to consider the evidence for that purpose.

The law you must accept from the court as correctly declared in these instructions. The instructions are to be considered as a whole.

In judging of the credibility of witnesses, you shall have in mind the law that a witness is presumed to speak the truth. This presumption, however, may be overcome by contradictory evidence, by the manner in which the witness testifies, or by the character of his testimony.

By a preponderance of the evidence is meant its greater weight in reference to its credibility, and it depends not necessarily upon the number of witnesses testifying but rather upon the character of the testimony with reference to its probable truth or falsity. [463]

If the evidence is evenly balanced in your minds, so that you are unable to say that the evidence on either side of the issue preponderates, then your finding must be against the party carrying the burden of proof, namely, the one who asserts the affirmative of the issue.

You are not bound to decide in conformity with the testimony of a number of witnesses, which does not produce conviction in your mind, as against

the declarations of a lesser number or a presumption or other evidence, which appeals to your mind with more convincing force. This rule of law does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary, if from the whole case, considering the credibility of witnesses and after weighing the various factors of evidence, you should believe [464] that there is a balance of probability pointing to the accuracy and honesty of the one witness.

You will disregard as evidence any statements made by any counsel during the trial of the case unless it amounted to an agreement concerning a fact in the case, and you are to exclude from consideration and entirely disregard any evidence offered and rejected or stricken by the court, treating the same as though you had not heard it or it had never been offered.

If you believe that any witness has wilfully sworn falsely as to any material fact in this case, you

may disregard the whole of such witness' testimony.

If the court has said or done anything which has suggested to you that it is inclined to favor the claims or position of either party, you will not suffer yourself to be influenced by any such suggestion.

The court has not expressed, nor intended to express, any opinion as to what witnesses are, or are not, worthy of credence; what facts are, or are not, established, or what inferences should be drawn from the evidence. If any expression of the court has seemed to indicate an opinion relating to any of these matters, you are to disregard it.

Any statement made by the court in considering an objection or motion, or in ruling upon such objection or motion, is made only in discussing the legal problem presented, or in [465] explaining the ruling of the court. Such statement should have no effect upon the determination of any question of fact by the jury. If any such statements were made in the course of these proceedings, they must be entirely disregarded by the jury.

You must weigh and consider this case without regard to sympathy, prejudice, or passion for or against any party to the action.

In determining the fair market value of the leasehold estate and the production facilities and equipment used in connection with the operation of the well, you are to determine such value on the basis of the use of the facilities and equipment as an integral and necessary part of the said well in the production of oil therefrom.

I am going to have to amend one of those offered instructions as I see its duplication in one already given.

I want the record to show that the first two sentences of Plaintiff's Instruction No. 1 have been eliminated by the court. This was done because it appears that there is a duplication. I also want the record to show that Defendant's Instruction No. 28 will not be given. That has been covered or will have been covered by instructions which the court expects to read.

I think the parties have agreed to this.

Mr. Dechter: Yes, your Honor; no objection.

The Court: In this case the ultimate question of fact to be determined by you is the actual market value of the property of the defendant, Sam Block, sought to be condemned in this action as of September 28, 1942.

The plaintiff in this action is the United States of America. These terms are interchangeable and will be so understood by you in these instructions. The term "Plaintiff," "United States of America" and "Government" will mean one and the same party.

The Constitution of the United States provides that private property shall not be taken "without just compensation."

Just compensation means, and will be fully accomplished, in this case by the payment of the amount you determine to be the fair market value of the defendant's property as of September 28, 1942.

"Fair market value," wherever used in these harges, means that sum of money which, consid- ring all the circumstances, could have been ob- ained for the property; that is, the amount that n all probability would have been arrived at by air negotiations between an owner willing to sell nd a purchaser desiring to buy, both parties being nformed as to all the facts, favorable and unfavor- ble which would affect the sale. In making that stimate there should be taken into account all onsiderations that fairly might be brought forward nd reasonably be given substantial weight in such argaining. [467] Keep in mind that you are not o find the value put on the property by the owner or a special or a speculative or an investment urpose, but that you are to find the fair market alue as of the date given.

The proper inquiry to be made in this proceeding s what price would the parcel of property bring f put upon the market at that time and sold for ash. As between individuals the owner may de- nand any price for his or her property, but when t is taken for public purposes, he or she can only lemand its fair market value. In this respect, you nust bear in mind that the fair market value can- ot depend in any degree upon the will of the wner, because to allow his or her judgment or ancy, in relation to the proper use of the property o influence the question of value, would be to make he property either more or less valuable, as it night happen to be possessed by one individual or nother.

Your verdict must not be based upon what you think would be a proper adjustment in money between the plaintiff and the defendant in this action, nor are you entitled to base it upon, nor even to consider, the necessity of the plaintiff to obtain this parcel. It may not be based upon, nor may you consider, the needs of the defendant, nor whether the defendant wanted to sell or did not want to sell. You must not base your verdict upon, nor should you consider, any sympathy to the defendant nor the ability of the plaintiff to pay. [468] Your verdict must be based solely upon what you find to be the actual market value of defendant's property as of September 28, 1942, and the law as I declare it to you, with your minds free.

The plaintiff is entitled to the same fair and unbiased treatment at your hands as if it were a private individual, and the fact that it might be able to pay a greater sum for these properties than a private individual must not be permitted to affect your verdict.

The question for the jury here is what has the owner of the property lost, not what has the taker gained. What is to be compensated for in this case is the loss caused the owner by the taking of his property for public purposes and not the value of the property to the government for those uses.

Just compensation is intended to equalize the loss caused the owner by the taking of his property for public use, and not the value of the property as applied to the public use. Therefore, the owner is not entitled to be compensated for any enhanced

value of the property attributable to the public purpose for which the lands are being taken. How much it may be worth to the public for those purposes to which it will be applied is a question with which the jury have nothing to do.

The testimony of a witness as to value is his opinion thereof, based upon his education, study, experience, [469] investigations, knowledge of the property, and the reasons for that opinion. You should consider such opinion and should weigh the education, study, experience, investigations, knowledge of the properties, and reasons of the witness for the opinion of value as expressed by him, and give to that opinion such weight as you deem it entitled to, whether it be great or slight. If you believe that the opinion of a witness was expressed without a sufficient investigation in order to inform himself about all material facts, or without sufficient knowledge of the material facts to form a just opinion, or if you believe the reasons advanced by him for his opinion are unsound, you may reject that opinion.

During the course of the proceedings I asked some of the witnesses to talk loud enough for you to hear. Is the court talking loud enough for you?

The Jurors: Yes.

The Court: Am I reading too fast for you? I want you to hear all of the instructions.

If you find and believe from the entire testimony that any of the witnesses have magnified or exaggerated the value thereof, or on the other hand have minimized or diminished the value thereof on

account of his or her interest in the suit or in the lands—I will change that to "property" instead of "lands." I will read that part again: of his or her interest in the suit or in the property, or his or her [470] prejudice, lack of candor or want of knowledge or lack of familiarity with the premises or from lack of experience or lack of trustworthiness, or for any other reason, then it is your duty to reject the evidence of such witness or witnesses insofar as you believe the same to have been exaggerated or minimized. You must arrive at your verdict from what you find to be a preponderance of the credible evidence as to the amount of money the owner is entitled to receive as just compensation for the loss to him, occasioned by the taking of his property in question on the dates specified.

You shall not render what is called a "quotient verdict." By the term quotient verdict is meant a verdict arrived at by chance or lot. Therefore, you shall not agree that each juror shall set down a sum which he thinks is the amount to be awarded any claimant as just compensation and then add all of said sums for a total aggregate and then divide such total aggregate by the number of jurors and the result obtained, whatever it may be, returned as your verdict. Such a verdict arrived at in such a manner is a quotient verdict and is illegal and void. Likewise, you shall not arrive at your verdict by any similar mathematical scheme or plan based upon chance or lot. Your verdict should be based upon the evidence as presented in

the trial of this case and applied to the law as given you in these charges by the court.

If in these instructions, any rule, direction or idea [471] be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions and as a whole, and to regard each in the light of all the others.

And I may add, in that connection, if the court reads a part of an instruction or one instruction faster or louder than it does any of the others that is done unintentionally and it doesn't mean that the court is trying to emphasize any instruction or any part of an instruction.

The court advises you that this is a civil case and a preponderance of the evidence on a question submitted to you for decision justifies you in finding accordingly.

This is a proceeding in eminent domain, that is, a proceeding whereby the United States of America, for the use of the Reconstruction Finance Corporation, seeks to condemn and appropriate to public use certain private property described in the complaint herein. The Constitution of the United States provides that private property shall not be taken for public use without just compensation being made to the owner of such property. One of the questions for your determination as jurors in this case is the amount of compensation which, under the evidence, will be just compensation to

the owner for such private property appropriated [472] through this action to the public use.

The inquiry in all such cases as to the uses of property in relation to market value is: What is the property worth in the open market, viewed not merely with reference to the use to which it is at the time applied, but with reference to the uses for which it is adapted; that is to say, what is it worth from its adaptability for all uses, having regard to the existing wants of the community and such wants as reasonably may be expected in the immediate future, and in this connection you may take into consideration all of the uses for which the property is reasonably adaptable, including its particular fitness for particular purposes, when such evidence of such purposes forms a factor in determining the market value.

In determining the market value of the property here involved, you may consider its location and environment and the character and nature of the developments surrounding it, its physical characteristics, its accessability or lack thereof, and any and all physical factors that may in any wise affect its adaptability and therefore its value in the open market.

The Fifth Amendment of the Constitution provides that private property shall not be taken for public use without just compensation. Such compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good position pecuniarily as he would

have [473] occupied if his property had not been taken.

In determining the market value of the land in controversy you are not bound by the opinion of market value expressed by any one or more of the witnesses who have testified in the case. It is proper that you should consider such testimony and give it such weight and credit as in your judgment it deserves; but if, in your judgment, the value fixed by one or more of the witnesses is not reasonable, you should disregard it and find such amount as in your judgment would be reasonable from the facts which you believe to be established by the evidence in the case.

You are instructed that in this case the burden is upon the defendant to prove the amount of compensation to which he is entitled by reason of the condemnation of his property by the plaintiff and that such compensation must be proven by a preponderance of the evidence. This means that the evidence on the part of the defendant as to the value of the property to be condemned must have greater weight in your estimation and more convincing effect than that of the plaintiff.

If in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you.

The attitude of jurors at the outset of their deliberations is a matter of considerable importance. It is rarely [474] productive of good for a juror, upon entering the jury room, to make an emphatic expression of his opinion on the case or to an-

nounce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to recede from an announced position if and when shown that it is fallacious. Remember that you are not partisans or advocates in this matter, but are judges. The final test of the quality of your service will lie in the verdict which you return to this courtroom, not in the opinions any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. To that end, the court would remind you that in your deliberations in the jury room there can be no triumph excepting the ascertainment and declaration of the truth. It is your duty as jurors to consult with one another and to deliberate, with a view to reaching an agreement if you can do so without violence to your individual judgment. To each of you I would say that you must decide the case for yourself but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, [475] you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jur-

ors. Upon retiring to the jury room you will select one of your number to act as foreman, who will preside over your deliberations and who will sign the verdict to which you agree. As soon as all of you have agreed upon a verdict, you shall have it signed and dated by your foreman, and then shall return with it to this courtroom.

A form of verdict will be given to you by the court. Swear the officers.

(Thereupon the bailiffs were sworn by the clerk.)

The Court: There was some suggestion that the jurors might be given the inventory. Is that your desire?

Mr. Dechter: Yes.

The Court: Do you have one, Mr. Clifton?

The Clerk: No, I don't, your Honor.

The Court: Do you have one in addition to the one you need?

Mr. Dechter: They can have my copy.

The Court: It is not marked in any way, is it?

Mr. Dechter: I was just going to look, your Honor, and see.

There are some pencil notations and figures.

The Court: Perhaps we better have one that is not marked.

Mr. Weymann: I can immediately get a copy.

The Court: You get one and we will send it up to them. They can have any of the exhibits they desire to have.

You may retire for your deliberations.

(Whereupon, the jury retired to deliberate

and the following proceedings were had in the absence of the jury:)

Mr. Dechter: Your Honor, Mr. Weymann and I are willing to stipulate, if it is agreeable to the court, that the jury may return its verdict in the absence of counsel.

Mr. Weymann: I am willing to so stipulate, your Honor.

The Court: Very well. Let the stipulation be entered. The court, however, would prefer to have you here. You will be available if we desire to get you?

Mr. Dechter: Yes, your Honor.

The Court: Because sometimes the jury wants instructions read, and I don't like to do that in the absence of counsel.

Mr. Dechter: I can get here in 10 minutes, or Mr. Hoyt can stay here if your Honor prefers it.

The Court: No, as long as you can come in a reasonably short time.

Mr. Dechter: I would appreciate it, because it will give us a chance to do something else.

Mr. Weymann: And I can get here in two minutes, if the court please.

Mr. Dechter: Thank you, your Honor. [477]

The Court: Court is now recessed.

Mr. Weymann: Pardon me. That copy of the inventory, Mr. McLay has gone for it.

Mr. Dechter: As long as you say it is a copy, it is O. K.

Mr. Weymann: It is the same as the mimeo-

graphed copy that you have; it is from the same stencil.

(Whereupon, at 2:10 o'clock court was recessed.) [478]

(Whereupon, at 5:50 o'clock p. m. the jury returned to the court room and the following proceedings were had:)

The Court: The jurors are all in their places, is it so stipulated?

Mr. Hoyt: So stipulated.

Mr. Weymann: So stipulated.

The Court: Have you agreed upon a verdict?

Juror Wilson: Yes.

The Court: Are you the foreman?

Juror Wilson: Yes.

The Court: Will you read it, please?

(Whereupon, the verdict of the jury was read by the foreman.)

The Court: Is it signed by you as foreman?

Juror Wilson: It is signed by me.

(The verdict was handed to the court.)

The Court: Read it, please.

The Clerk:

"In the District Court of the United States, Southern District of California, Central Division.

No. 2454-B—Civil

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CERTAIN PARCELS OF LAND, etc., et al.,
Defendants.

VERDICT AS TO INTEREST OF DEFENDANT SAM BLOCK IN PARCELS 87 AND 103, AS DESCRIBED IN AMENDED COMPLAINT.

"We, the Jury in the above-entitled case, find the market value as of September 28, 1942, of the leasehold estate of the defendant Sam Block, including all the production facilities and equipment used on said date in the operation of the well, to be the sum of $20,397.00.

"We further find the market value of as September 28, 1942, of the 10 7/12 per cent overriding royalty of the defendant Sam Block to be the sum of $1,857.00.

"Total market value of the foregoing as of September 28, 1942, is $22,254.00.

"Dated: Los Angeles, California,

"July 31, 1945.

"ALBERT E. WILSON,
Foreman of the Jury."

Is that your verdict each and all, lady and gentlemen?

The Jurors: Yes.

The Court: Does either party desire to have the jury polled?

Mr. Hoyt: I have no particular desire.

Mr. Weymann: May the jury be polled?

The Clerk: As I call your names, lady and gentlemen, will you state yes or no if the verdict as read is your verdict.

Earle C. Brown?

Juror Brown: Yes. [480]

The Clerk: Russell B. Snow?

Juror Snow: Yes.

The Clerk: Harry Friedman?

Juror Friedman: Yes.

The Clerk: Albert E. Wilson?

Juror Wilson: Yes.

The Clerk: Spencer T. Honig?

Juror Honig: Yes.

The Clerk: W. S. Tupman?

Juror Tupman: Yes.

The Clerk: John C. Hobson?

Juror Hobson: Yes.

The Clerk: L. W. Mills?

Juror Mills: Yes.

The Clerk: A. S. Porter?

Juror Porter: Yes.

The Clerk: Hazel McAvoy?

Juror McAvoy: Yes.

The Clerk: Walter G. Bradley?

Juror Bradley: Yes.

The Clerk: A. C. Byrne?

Juror Byrne: Yes.

The Court: Each one of the jurors announces that the verdict as read is his verdict.

The members of the jury are now excused. You will be notified when to return. Court is now adjourned. [481]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 31st day of July, A. D. 1945.

/s/ MYRTLE BENNALLACK,

/s/ SAMUEL GOLDSTEIN,

Official Reporters.

[Endorsed]: Filed Mar. 22, 1946.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON MOTION FOR NEW TRIAL.

Los Angeles, California,

Monday, October 1, 1945

Appearances: For the Plaintiff August Weymann, Esq., and Arch G. McLay, Esq., Special Attorneys, Lands Division, Department of Justice. For the Defendant: Raphael Dechter, Esq., and B. L. Hoyt, Esq., 633 Subway Terminal Building, Los Angeles, 13, California. [1]

Los Angeles, California,

Monday, October 1, 1945, 2:00 P. M.

Mr. Weymann: This, if the court please, is a motion to set aside the verdict of the jury, to vacate the judgment thereon, and grant a new trial upon all the grounds stated in the written notice of motion. The grounds stated are: Excessive damages appearing to have been given under the influence of passion or prejudice; the insufficiency of the evidence to justify the verdict of $20,397.00 as the fair market value of the leasehold estate of the defendant, including all other production facilities and equipment used in the operation of the defendant's well; that the verdict is against law; and errors in law occurring at the trial and excepted to by the plaintiff.

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* Page numbering appearing at top of page of original Reporter's Transcript.

Your Honor will recall this case was commenced on July 24th of this year, and the jury brought in a verdict for $20,397.00, which they found to be the market value on September 28, 1942, of the leasehold estate of the defendant Block, including all of the production facilities and equipment which were used on that date in the operation of his well.

The jury's verdict purported to be rendered under the instructions given by the court, which were, in part, as follows:

"In determining the fair market value of the [2] leasehold estate and the production facilities and equipment used in connection with the operation of the well, you are to determine such value on the basis of the use of the facilities and equipment as an integral and necessary part of the said well in the production of oil therefrom."

I might say for the convenience of the court that as I quote parts of the record I will refer to the page of the transcript. That is transcript page 466.

The court further instructed the jury as to market value in these terms:

" 'Fair market value' * * * means that sum of money, which, considering all the circumstances, could have been obtained for the property; that is, the amount that in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy, both parties being informed as to all the facts, favorable and unfavorable which would affect the sale. In making that estimate there should be

taken into account all considerations that fairly might be brought forward and reasonably be given substantial weight in such bargaining." Transcript 467.

The Court: I don't have the instructions before me. [3] What is the number of that instruction, Mr. Weymann?

Mr. Weymann: I haven't the number of that instruction, if the court please. If you will recall, so many of the instructions were consolidated after a conference, so that the original numbers of the instructions submitted were rearranged.

The Court: I think I had them all numbered as I gave them, so when Mr. Clifton comes in he will probably have it.

Was the other instruction numbered? I think they just didn't give the numbers in the transcript.

Mr. Weymann: They did not, if the court please. That was page 467, this one on market value.

The Court: You referred to a previous instruction.

Mr. Weymann: As to the unit valuation. That is transcript page 466.

The Court: They were both plaintiff's instructions, weren't they?

Mr. Weymann: They were plaintiff's instructions, yes, sir.

The Court: That is proposed instructions?

Mr. Weymann: Yes, proposed instructions.

The Court: They are all instructions of the court when the court gives them.

Mr. Weymann: All instructions which the court gave, at any rate. [4]

The Court: You may proceed.

Mr. Weymann: There is this further instruction:

"* * * you are not to find the value put on the property by the owner for a special or a speculative or an investment purpose, but that you are to find the fair market value as of the date given.

"The proper inquiry to be made in this proceeding is what price would the parcel of property bring if put upon the market at that time and sold for cash."

That appears in the transcript at page 468.

No exceptions were taken to these instructions, and it may be deemed conceded, therefore, that they correctly state the law which the jury was bound to follow, and the verdict, of course, should be judged in the light of those instructions.

The property which was the subject matter of the trial, so far as this motion is concerned, was an oil and gas sub-lease owned by the defendant Block in the Playa del Rey field.

There was one producing well on that known as Block's No. 10, together with the production facilities and equipment necessary to make it a producing well. No evidence of sales of comparable property was introduced by either side.

I think it will be conceded that it is practically impossible to find a comparable oil property which is comparable [5] in all essential elements, because oil wells are too individual in their characteristics.

However, there was no evidence of sales of other property.

I would like to call your Honor's attention, then, to the basis of valuation as we conceive it, and as I believe it was tried by both parties. The elements which go to make up the market value of an oil lease are the potential future production from the lease and the profit which the operator or lessee may reasonably expect to derive from the production and the sale of the minerals after paying all expenses and charges necessary to recover and reduce to possession the minerals which may be found on the property. We speak of an oil lease as an interest in real property, and in legal terminology call it a profit a prendre. In the last analysis it is nothing more nor less than the right to go on another man's property and at one's own expense recover, possess and sell whatever of value may be recovered.

Obviously, if nothing is recovered the right is valueless. And if the expense of recovery exceeds the probable recovery, the right is also valueless. There are many instances in which that occurs, of course. Or if the means essential to the recovery are not available or cannot be procured at a reasonable price, then, also, the right is valueless.

Our physicists tell us that it is possible to transmute metals, but a patent on that at the present development of the [6] science would be valueless because of the excessive cost. There are billions of dollars of gold in sea water, we are told, but the cost of extracting it is so enormous that it isn't

a practical proposition. So it may well be that an oil lease which has recoverable minerals in the ground may be valueless if the cost of recovering the minerals exceeds what may be recovered.

Now, a purchaser, this hypothetical purchaser of the Block lease, is going to ask himself: How much can I get out of this? How much will it cost? If the equipment to get it out, plus the cost of operation, costs more than I can get in minerals together with what I may be able to salvage from the equipment after I am through using it, manifestly I wouldn't pay anything for the lease.

Frequently when leases are abandoned, of course, there is a salvage value of the equipment, and it is conceivable that a lease may be purchased in order to abandon it and salvage the equipment, because that may be worth more than the recoverable oil.

I wanted to preface the discussion of the evidence so that our viewpoint may be clearly before the court. Now I come to the evidence upon which this verdict must be justified if at all.

Defendant Block produced five witnesses on the issue of value. The owner, Block, testified giving separate [7] valuations for the lease and for the equipment which he intended to use to produce the lease.

The defendant produced Mr. Rubin and Mr. Rush, who qualified as dealers in used oil well producing equipment, and who testified as to the market value of the equipment only as of October 4, 1943, and under questioning by the court it was brought out

from several witnesses that the value as of September 28, 1942, and October 4, 1943, was substantially the same.

The defendant produced one petroleum engineer consultant, Mr. Crown, who testified as to the value of the future recovery of minerals from the property, but he gave no opinion as to the market value of the equipment realized at any time.

The Court: Before you leave that, how much did Mr. Block value it at? I have forgotten the exact figures.

Mr. Weymann: I was going to analyze that in detail, if the court please. I am just reciting the witnesses and what they testified to.

The Court: Go ahead.

Mr. Weymann: They produced also Mr. Owens, who qualified on abandonment of wells, and he testified to the cost of the abandonment of the wells. Five witnesses for the defendant.

The plaintiff produced two witnesses, the engineers, [8] Oliver and Wents, each of whom testified as to the market value of the leasehold estate, together with the equipment used in producing the well as a single operating unit and as a going concern.

Now, in that regard they agreed thoroughly with the theory of the defendant, because in his argument to the jury Mr. Dechter said: The government is taking over a going concern, and you can't have a going well unless you have all of this personal equipment.

That is the theory, of course, of the plaintiff, and of the defendant in this proceeding.

Now, coming to the testimony of the individual witnesses. The defendant Block testified that in his opinion his lease was worth $35,000.00, transcript 72; and the equipment to operate the lease was worth an additional $22,000.00, transcript 73; but under persistent questioning both by counsel for plaintiff and finally by the court he said he contemplated the use of that equipment in getting the production lease. Transcript 87.

He arrived at his valuation of the lease by assuming a production of 25 barrels a day for 10 years of 365 days each at 94 cents a barrel. That is transcript 75 and 90. He allowed $25,000.00, roughly, for the total operation cost, but said he never kept track of it. Transcript 76. That while his valuation was based on a price of 94 cents a barrel [9] for 10 years, at the time of the acquisition of the property by the government he was receiving around 75 cents a barrel. Transcript 77. When he was asked under cross examination if he kept records to ascertain whether the well was paying, he testified that the only record he had was that at the end of the month he deducted his expenses and ascertained how much was left over every month from all of his ten wells together. Transcript 91, 92. Under cross-examination, however, he testified that these figures which he had given as to value were based upon what the property was worth to him, not what a willing buyer would pay for it. Transcript 94, 95.

Now, Defendant's counsel referred——

The Court: Excuse me.

Mr. Weymann: Yes.

The Court: How long do you think it will take you to present your argument, Mr. Weymann?

Mr. Weymann: I think I can finish it up in another 20 minutes.

The Court: Would it be agreeable to you gentlemen to return in the morning?

Mr. Weymann: I think so.

The Court: How about you, Mr. Dechter?

Mr. Weymann: If that is the court's pleasure.

Mr. Dechter: It will have to be agreeable.

The Court: No, it isn't the court's pleasure. There is [10] a regular meeting of the judges being held this afternoon, and they are awaiting my attendance.

Mr. Dechter: I think that will be satisfactory. I will just cancel some appointments I have.

The Court: If you can do that.

Mr. Dechter: Absolutely.

The Court: I can arrange it for 9:00 o'clock in the morning if that will help you. In fact, it will suit me just as well.

Mr. Weymann: I don't know. We upstairs have so much correspondence to get out.

The Court: You can get that out afterwards, can't you?

Mr. Weymann: Yes. I have an appointment made at 10:00 o'clock which I will have to cancel.

The Court: If you meet at 9:00 you will be through at 10:00.

Mr. Weymann: If that is agreeable to the court.

The Court: Is that satisfactory to you?

Mr. Weymann: Yes, that is satisfactory.

The Court: Very well. We will continue this to 9:00 o'clock in the morning. I am sorry about it. I had really forgotten about the judges' meeting.

Mr. Dechter: It is perfectly all right.

(Whereupon, at 3:10 o'clock an adjournment was taken until 9:00 o'clock a. m., Tuesday, October 2, 1945.) [11]

Los Angeles, California,

Tuesday, October 2, 1945. 9:00 a.m.

The Court: Proceed, Mr. Weymann.

Mr. Weymann: I believe yesterday afternoon when we took our adjournment we had just completed the consideration of Mr. Block's testimony. I stated that under cross examination he testified that the figures as to value which he had given were based upon what the property was worth to him. The testimony is set forth on pages 94 and 95 of the transcript. He was asked this question:

"When you made this valuation to which you have testified, Mr. Block, so we can get this thing clear in our own minds, was that the estimate of what the well was worth to you or what you thought a willing buyer would pay for it in the event that you were willing to sell it?

"A. I never sold any wells.

"Q. You never sold any wells?

"A. I don't sell any wells."

And I asked the reporter to read the question to Mr. Block, and he answered: "I never cared to sell my wells. I always liked to buy them."

"The Court: Just answer the question yes or no, and then you may explain your answer if it is necessary.

"The Witness: I would say what it was worth to me. [12]

"Q. By Mr. Weymann: Then, the figures to which you have testified are based on what it was worth to you? A. Yes, sir."

Of course, on testimony of that kind under the Court's instruction that is no predicate for arriving at market value, and I think counsel clearly conceded that and properly so when he commented on it in his address to the jury. I quote:

"You have the testimony of Mr. Block that the value of the leasehold to him is $35,000.00. Now, he is not a lawyer and he doesn't know that that doesn't constitute market value. It must be the value to both a buyer and a seller; not just to him alone."

That, I think, eliminates, or should eliminate or should have eliminated, from the consideration of the jury the testimony of Mr. Block altogether as to market value.

We come, then, to the testimony of Mr. Rubin, the expert on value of used equipment. He testified that he was shown a copy of the inventory of all of the personal property which was found on the Block's well, and he was asked to look it over for

the purpose of testifying as to value. He formed an opinion after looking over a copy of that inventory and testified, over plaintiff's objection—transcript 118, 119—that it was worth over $22,000.00. There was no cross [13] examination of that witness.

Defendant's witness Rush also testified, over plaintiff's objection—transcript 160—that the market value——

The Court: Pardon me before you read that, Mr. Weymann.

Mr. Rubin's testimony was in regard to the inventory of the personal property?

Mr. Weymann: That is correct, your Honor.

The Court: Very well. Proceed.

Mr. Weymann: Defendant's witness Rush—that was also as to the inventory of the personal property. He also testified over plaintiff's objection, transcript 160, that the market value of all of the equipment on the well as scheduled in plaintiff's inventory was approximately $18,000.00. That appears on transcript 162.

On cross examination he testified that his estimate was based on the value of that equipment in place.

The Court: Read the last two sentences or so, Mr. Goldstein.

(The record was read.)

Mr. Weymann: That appears on transcript 166. That valuation was as of October, 1943. It was subsequently brought out from questioning of both plaintiff's and defendant's witnesses that the value

as of September 28, 1942, and of October, 1943, was substantially the same.

However, Mr. Rush further testified that after eliminating [14] the casing and the liner in the well which could not be removed when the well was abandoned, the remaining equipment was of the value of $12,260.00. That appears on transcript 179. And all of this equipment, of course, was essential to the operation of the well.

That figure of $12,260 will later become important in our analysis of the evidence.

Witness Crown was produced as a consulting petroleum engineer. He testified that he had been so engaged for a period of one year, and his testimony was to the effect that the ultimate future recovery from the well was 40,300 barrels, to be produced over a period of 10 years. That appears on transcript 199. He estimated the present market value of defendant's interest in that production at $10,930.00 or, in round figures $11,000.00, transcript 128, based on an operating profit over that period of 10 years of $13,494.00, transcript 204.

The Court: What is the page number where he estimated the value of the oil to the leasehold?

Mr. Weymann: Page 128.

The Court: 128?

Mr. Weymann: Yes, 128. If I recall correctly, Mr. Crown gave way to another witness. His testimony was——

The Court: How much was it, $10,000.00?

Mr. Weymann: $10,930.00, and he rounded that out to [15] $11,000.00. His valuation didn't include

anything for personal property at any time. He arrived at his estimate of future profit by using a total sales price of 97 cents per barrel—that is transcript 200-203—which was made up of a posted market price of 94 cents for oil in the spring of 1943, plus 3 cents for gas and gasoline.

He testified, also, that in September, 1942, September 28th, when the well was taken over, and until the spring of 1943, the posted market price was not 94 cents per barrel for the oil, but approximately 77 cents. In arriving at his valuation——

The Court: Was he the one who testified that they actually received 81 cents, or something of that kind?

Mr. Weymann: No. I think that was the government's witnesses. I think it was Mr. Oliver.

The Court: Pardon the interruption.

Mr. Weymann: Surely. I believe Mr. Dechter will bear me out on that.

The Court: That is unimportant now.

Mr. Weymann: Well, in arriving at his valuation he didn't take into account any cost of abandonment, although he admitted that there always is a cost of abandonment. He didn't know the provisions of the lease or of the sub-lease, and made no effort to ascertain them. He didn't take into account any possible pipeline charges or trucking charges for [16] the delivery of the oil to the refinery.

He was asked on cross examination whether if there was such a charge the price paid by the purchaser of the oil would be the same, and his answer

was: "I don't know just how they would handle that. If they had to pay a trucking charge there, why it might be taken off the price of the crude." That is on transcript 201.

He didn't know if they had to pay a trucking charge, and didn't take it into consideration, made no investigation.

He computed the operating cost to produce that well over the period of 10 years at $13,870.00. Transcript 204. But your Honor will recall that the owner himself testified that the normal operating cost per month was, to use his own language, "A couple of hundred dollars a month." That occurs on transcript 104.

Defendant's last witness Owens was engaged in the business of oil well abandonment. He testified that the usual and reasonable charges for abandoning an oil well in the del Rey field in September, 1942, was about $800.00, and that it would be about the same in October, 1943; and that it would be substantially the same eight or ten years hence. That didn't include the cost of cleaning up the property, filling up the sum pits and restoring the property. That he said would run from $800.00 to $1,000.00 additional. That would make the cost of abandonment from $1600.00 to $1800.00. [17]

That constitutes defendant's evidence of value.

I just want to go over the plaintiff's evidence merely for the purpose of showing that there is nothing in that evidence to support the jury's verdict.

Mr. Oliver for the plaintiff testified that in his

opinion the 70 per cent interest of Mr. Block in the well had a probable market value as of September 28, 1942, of $5650.00. That amount was arrived at by the summation of the market value of the oil reserves approximately $3150.00, and the salvage value of the equipment upon the abandonment of the well after paying abandonment costs of $2500.00. That appears on transcript 242.

Plaintiff's witness Wents testified that in his opinion the market value of Mr. Block's 70 per cent operating interest in the production of the well, together with the appurtenances, had as of September 28, 1942, a fair market value of $5690.00, and that in his opinion there would be no substantial difference in the value of the mechanical equipment between September 28, 1942, and October 4, 1943. He estimated the future life of the well at 10 years, which was the same as Mr. Crown's.

Now, if the court please, I would like to analyze defendant's evidence of value, resolve all doubts and questions, conflicts, in its favor, and see if by any stretch of the imagination a verdict of $20,397.00 can be justified [18] on that evidence alone.

As we have seen, defendant's witness Crown arrived at a total operating profit on 40,300 barrels of potential future production of $30,494.00 over a period of 10 years. After deducting operating costs of $13,870.00 for 10 years, which is roughly $10,000.00 less than the owner himself testified it would cost him to operate, Mr. Crown's estimate ignores any question of delivery charges, of cost of abandonment, based on a price of oil which was not in effect

at the time this hypothetical sale was made but which didn't come into existence until six months afterwards. However, solely for the purpose of testing the validity of this verdict we will accept his figures, his estimates of future production and cost of operation. Taking, then, the $13,494.00 estimated operating profit as correct, that in Mr. Crown's opinion had a market value as of September, 1942, of $10,930.00. Mr. Rush's estimate of the market value of the recoverable equipment is $12,260.00. That he testified was necessary for the continued operation of the well. Of course, that couldn't be realized without destroying Mr. Crown's estimate of market value of $11,000.00, because it was one integral unit. It couldn't be realized in less than 10 years, the estimated life of the well.

Now, the question arises: Would any rational person, any man using ordinary judgment, invest $12,260.00 in equipment [19] for the purpose of producing that well with the idea of getting back for that equipment just $12,260.00?

Mr. Crown recognized that a man is entitled to some return on his capital investment, and he discounted those future earnings at six per cent.

So, suppose we discount this $12,260.00 of capital investment in equipment, assuming that that amount can be realized at the end of 10 years—which to my mind is an utter absurdity—but supposing we discount that six per cent, that would give rise to a present worth of that hoped for $12,260.00 of $6988.00. Add that to the $10,930.00, which is to be realized—which is the market value of the future

production—and we have a total of $17,918.00. But according to defendant's own testimony there would have to be expended approximately $1800.00 in cleaning up the property, reducing at the highest possible estimate the present value of the purchaser's ultimate recovery to $16,118.00, taking defendant's testimony at its face value.

I say in using those figures that we assumed that the man could get $12,260.00 for this equipment in 10 years from now. Now, it is a matter of common knowledge that machinery or equipment depreciates in value; that no man can expect after using equipment, and particularly oil producing equipment, for 10 years, that it would be worth the same after that use as it was before he used it. It is utterly absurd, it [20] seems to me. Counsel in his argument made much of the fact that in 1945, July, 1945, he could get more for his 1940 Mercury than he paid for it. That is probably true. But I doubt very much if any one would, in 1945, pay $1100.00 for a 1940 Mercury in the anticipation of getting $1100.00 or more, with profit, 10 years later, because that wouldn't be an investment, that would merely be a gamble that the war and the conditions of scarcity brought about by the war would continue and intensify over that period; and that, certainly, is no basis for estimating just compensation in condemnation proceedings.

We submit that an informed purchaser and a reasonable seller would expect to write off the standard rate of depreciation on this equipment, 5 per cent per year—that is the standard rate used in all depreciations taken on such equipment, and that

they would recognize that the value of that had depreciated 50 per cent at the end of 10 years. In other words, that the man who bought this well with the equipment at the end of 10 years would only expect to get one-half of the present value of the equipment, but he wouldn't get that for 10 years, so that value should be discounted to present worth. And, when we depreciate that to present worth, instead of $6988.00 to be realized for this equipment, we have $3490.00; and, adding that to the $10,930.00, we have a total present worth of the future [21] recovery reasonably to be anticipated of $14,420.00, from which we have to deduct the $1800.00 which has to be expended to fulfill the conditions of the lease. That leaves $12,620.00, leaving out entirely plaintiff's evidence of market value, and ignoring the glaring discrepancies and omissions in Mr. Crown's valuation to which I called attention.

We may test the reasonableness of this verdict by the reverse process: A buyer of a stripper well, and edge well, single well, in a partially depleted field, would reasonably, it would seem, expect to receive 12 per cent per annum on his investment, considering all of the hazards of that business. We won't take 12 per cent; we will take 6 per cent. Now, he pays, according to the verdict of the jury, $20,397.00 for this well. Now, if he is to realize 6 per cent on his investment over the period of 10 years, he should get $12,228.00 interest, or a total of $32,625.00 from the sale of the production, from the salvage of the equipment, and anything that may be realizable from his purchase.

What does he receive at the highest? He receives $24,000.00.

Now, what does that work out to? The ultimate operating profit is $24,000.00. He is paid, according to the jury's verdict, $20,400.00, in round figures, which leaves him the enormous profit on a single producing oil well of $3600.00 over a period of 10 years. That is 17 6/10 per cent, or [22] approximately 1¾ per cent per annum return on the investment.

Now, it would seem to me that any one using ordinary intelligence would prefer to buy war bonds. And, as I say, it is absurd to imagine that he would receive $12,260.00 for this equipment 10 years hence. If he receives less than that, if he receives the ordinary depreciated value, he wouldn't even get his money back.

So on any conceivable basis this verdict is entirely unjustifiable by the evidence.

Now I come to the last and final ground for the motion of a new trial, and that is the admission of the testimony of a separate valuation for the equipment and the operating well.

The Court: Mr. Weymann, before you leave the figures, what was the estimate of the value of the personal property on the well by one of the government's witnesses?

It seems to me he gave some figures around $15,000 or so, but that is just——

Mr. Weymann: I have that here. Mr. Oliver testified that the reproduction cost of the equipment

which was in the well on September 28, 1942, was approximately $19,000.00.

Mr. Dechter: More than that.

Mr. Weymann: Nineteen thousand and several odd hundred dollars. [23]

Mr. Dechter: $19,846.85.

Mr. Weymann: That was the reproduction cost as of September 28.

Mr. Dechter: He called that the replacement value.

Mr. Weymann: Yes. In other words, in his estimation that is what it would cost to replace that equipment.

The Court: Did he give any estimate as to the market value of that property?

Mr. Weymann: As of that date?

The Court: Yes.

Mr. Weymann: No, he did not, because he testified that he couldn't separate them; that the property had no market value——

The Court: But the replacement value was $19,846.00?

Mr. Weymann: That is correct. The testimony, of course, of Mr. Oliver was to the effect that no market value could be realized unless the equipment were removed, and if it were removed, the market value of the lease would be destroyed.

The Court: Of course, what I have in mind is that the jury may have considered that the sale was made as of the date of September 28th, and even taking Mr. Oliver's replacement figures there is some basis there that the government actually took

over, in the hypothetical sale, property which was worth, say, nearly $19,000.00.

Mr. Weymann: I haven't the slightest doubt, if the [24] court please, that there was a confusion in the minds of the jury.

The Court: Would that be a confusion? Because the government did take that property as of that date, and it was worth that much as of that date, it seems that they may as reasonable businessmen have determined that that was the reasonable market value as of that date of that property.

Well, you go ahead with that other point, because you have made your argument on this point. I thought you were going into all the figures and that is why I asked you about that.

Mr. Weyyman: I would like to pursue that phase of it a little further. Mr. Oliver's testimony as to the replacement cost new of that equipment is considerably higher, almost $1800.00 higher than Mr. Rush's tesitmony as to the market value of that equipment. Mr. Oliver did not testify as to any deduction for casing or liner which was in the well and which could not be removed.

The Court: I understand that.

Mr. Weymann: So it may well be in this case as in so many cases that the property would have a higher value by abandoning the well and selling the equipment.

The Court: Whatever it was, the jury probably considered that the government took over whatever property he had. [25]

Mr. Weymann: That is correct. There is no question but what it did.

The Court: Whatever was the highest value.

Mr. Weymann: The highest value, and he is entitled to the highest value which could be realized from the property taken.

The Court: Under any circumstances?

Mr. Weymann: Under any circumstances, yes.

The Court: Proceed with your other point.

Mr. Weymann: The other point is this: that in permitting the introduction of separate valuation for the equipment essential to the production of the well, and then the value of the well, assuming the use of that equipment, the defendant is getting double compensation.

I attempted to illustrate that to the jury, evidently with very little effect, but let me use this illustration:

Suppose the government had requisitioned, we will say, a used Rolls Royce automobile from Mr. Block, and he testified that it had a good body, good upholstery, and a very excellent engine in it, and it was good for a hundred thousand miles, and that the value of that was $2,000.00, let us say, and he established—assuming all of the other facts to be proved—a reasonable value of $3,000.00 for that automobile as an operating vehicle; then he puts on evidence, "Now, the engine in that automobile could be taken out and sold and [26] it has a market value of a thousand dollars additional"; if he is paid for that engine a thousand dollars, he can't

be paid $2,000 for the automobile, because they are integral parts of one operating unit.

Now, an engine is no more essential to an automobile than production equipment is to an oil lease.

As I stated at the very beginning of this argument, an oil lease for which there is no available equipment, or for which equipment cannot be procured at a cost which is economical, is just as valuable as a gold mine on the moon, because when a purchaser purchases this property he determines, "How much is it going to cost me to get out 40,000 barrels of oil on which after paying operating costs I can realize $13,000.00?" If I have got to pay out $18,000.00 or $20,000.00 for the equipment, obviously I am not going to get enough out to make it pay and it is worthless. So it is in this case. I am morally convinced that this jury gave by reason of that evidence of this additional value for equipment, which was also valued in the lease —that the jury went astray on that and gave double compensation, because you can't have an operating well without the equipment, as Mr. Dechter truly said.

The value of the operating well includes the value of that which is necessary to make it so, and then when you give additional compensation for that equipment you are giving double compensation.

Now, in addition to the cases I have cited, if the court please, during our argument on that very question, I would like to cite a number of additional cases if the court cares to take them. Devou v.

The City of Cincinnati, 162 Fed. 633, 635. That is a Sixth Circuit case.

Morton Butler Timber Co. v. The United States, 19 Fed. (2d) 884 at 888. That is also the Sixth Circuit.

United States v. Meyer, 113 Fed. (2d) 387.

Vallejo, etc. v. Home Savings Bank, 24 Cal. App. 166.

United States v. 19.86 Acres of Land, 141 Fed. (2d) 344, 348. That is a Seventh Circuit case.

So our position is this, that in permitting those figures of a separate value for this equipment, admittedly essential to the value of the lease,—in permitting those figures to go before the jury and getting them into the jury's minds the position of the government was prejudiced before the jury, and I believe that had a good deal to do with arriving at a verdict which on no other possible basis could be justified.

Now, on the question of the power of the court to grant a new trial there are numerous cases, and I want to refer to just one of them because it is a Ninth Circuit case, an opinion written by the senior judge. That is Murphy, et al. v. United States District Court, 145 Fed. (2d) 1018.

The Court: 145 Fed. (2d)?

Mr. Weymann: That's right. That was a condemnation [28] proceedings.

The Court: The page number?

Mr. Weymann: 1018.

In that case a motion for a new trial was made by the government on the ground that the verdict

was excessive—that was a Northern District case —and the court held the matter under submission for more than 60 days, and the defendant then objected to the granting of a new trial because the time limitation in the State Court——

The Court: That is a California rule.

Mr. Weymann: It is a California rule, but the Appellate Court, of course, held that was not applicable, and in ruling on that motion the Appellate Court said:

"A Federal District Judge not only has the power and authority but is charged with the duty and responsibility to set aside the verdict of a jury and to grant a new trial when in his judgment and discretion the amount of compensation awarded is excessive."

I feel that upon a review of the evidence in this case the court cannot but help to arrive at the conclusion that upon any theory, upon any consideration of this evidence, it cannot help but arrive at the conclusion that the verdict of this jury is grossly excessive.

Mr. Dechter: At the outset, your Honor, I would [29] respectfully call the court's attention to Rule 17 on New Trials of the Rules of this court, which provides as follows:

"Within the time provided for in Rule 59 (b) of the Federal Rules of Civil Procedure, the applicant shall serve upon the adverse party and file with the clerk a motion for a new trial stating the grounds upon which he relies, and stating the papers on which the application is to be based. If

a ground of the motion be error in law occurring at the trial, the motion shall specify the particular error or errors relied upon; and if a ground be insufficiency of the evidence the motion shall specify the particulars wherein the evidence is claimed to be insufficient."

It is my contention that the only valid ground set forth in the motion is No. 4; which is the error in law occurring at the trial, and which the government has specified as the receipt of evidence of the component parts of the property taken: that the assignment of the ground of insufficiency of the evidence to justify a finding of the fair market value of $20,397.00 is equivalent to the assignment of finding that the judgment is unsupported by the evidence, or the evidence is insufficient to support the judgment.

Now, while that particular rule has not been interpreted in any particular case, the exact same language has been [30] interpreted time and time again on appeal where a finding is attacked because the evidence is insufficient, and the courts have held time and time again that you must specify what the evidence was, and in what way the evidence received was insufficient to justify the finding.

But assuming that the court will consider the ground anyway, I feel that in this case the evidence is more than sufficient to support the jury's verdict, and I feel the evidence is sufficient if you eliminated all of the defendant's testimony and only the testimony of the plaintiff was in this particular record. This court gave two standard instructions, which

were approved by the government, that the jury is not bound by the expert opinions of the experts; that their opinions are merely advisory; that if their reasoning does not support the opinion, they do not have to take the opinion and that they can form their own opinion from all of the facts and circumstances presented in the case.

Mr. Oliver testified that the replacement value was nineteen thousand eight hundred some dollars. When he was asked what the fair market value of that equipment was at this time, he just deliberately refused to give an answer; he attempted to give what the salvage value would be 10 years from today, and the court specifically directed Mr. Oliver to answer my question, and if he couldn't answer it [31] to say he couldn't answer it, and he took the out by saying he couldn't answer the question in that way. So the only evidence of his as to the value of the equipment to go before the jury was the value of nineteen thousand eight hundred some dollars. In other words, he was so impressed by his own ability that he refused to deviate from his statement and give an opinion, if he had an opinion, as to the fair market value as of that date.

And, incidentally, both of the government's witnesses separated their valuations exactly the same as the defendant's witness, only instead of doing it by separate witnesses they did it by the same witness. Both Mr. Oliver and Mr. Wents gave the component parts of the equipment. Only Mr. Oliver tried to give the salvage value 10 years hence, and the value of the leasehold, and he admitted that

his opinion of the fair market value of the leasehold at this time was what he estimated the net recovery would be plus the value of the equipment 10 years from now, not as of the date of the taking by the government. Mr. Wents attempted to do the same thing, and my recollection is that the court struck out the testimony of Mr. Wents as to what the value would be 10 years hence, but on cross examination I asked him certain questions as to only four items on the three pages of inventory, to-wit, the four being the rods, the casing, the liner, and the derrick, and based upon his opinion on those items his valuation [32] was $13,858.88 as of the date of the taking. In other words, what a purchaser or a seller would give and take for that equipment as of September 28, 1942. And when you add the numerous other items, some of which are very substantial, even based on his own figures the value would exceed that of the defendant's own witnesses.

Now, the court will also recall that part of the court's reasoning in separating the value was twofold: First, based upon the fact that the government had originally only been authorized to condemn the real estate under the original resolution; that the second resolution made almost a year later authorized the taking of the personal property, and the evidence is without contradiction on both sides that all of this equipment it was customary in the oil business to remove and replace, to sell and replace again, with the exception of the casing and the liner, and the court expressed itself that the

casing and the liner should be deemed part of the real estate and the other equipment should be deemed personal property, because there was no contradiction from anybody that that equipment was personal property and could be removed; and under the very terms of the lease the government offered in evidence the lessee was authorized to remove that personal property. Then at the conclusion of the case when the court discovered that there was no difference, even, under our own witnesses as to the market value of the equipment [33] as of October '43 and September '42, the court said in order not to confuse the jury I am going to have them determine the value of the entire thing as of September 28, 1942, and the court instructed the jury to bring in the verdict of the entire property being taken, including the personal property, fixtures or equipment.

I am trying to give the background of that, your Honor. In other words, your Honor was of the opinion all the way through that the dates should be separated, but because of the fact that the values were the same the court decided to have it all valued as of one particular date.

There is no question about the jury not having been properly instructed. As a matter of fact, both sides argued the matter to the jury, and I think we both merely reiterated what was in the instructions, and the jury were fully advised on the matter.

But let's go back to the plaintiff's own testimony. Mr. Oliver gave a productive life to the well of 8 years; Mr. Wents of 10 years. Now, the

government's own exhibit of the production of this well showed for a period of two years prior to the taking, from September, 1940 to September, 1942——

The Court: I don't think it is necessary for you to repeat that. You made that argument to the jury. You had that map there, I believe, in front of you.

Mr. Dechter: In other words, I am trying to illustrate [34] by the government's own exhibit based upon the price of 80 cents a barrel, which was the price that Mr. Oliver and Mr. Wents used, that just the two years alone prior to the taking the well had produced net $10,915.20, and for the six months period from September, '42 to June, '43 the well had produced for 9 months 6466 barrels which, put on an annual basis, would be 8621 barrels or a net for this particular interest of $5853.40 for the 70 per cent interest. Just for one year. And I think the jury had a right to take that into consideration, because if you capitalize, for example, the production from September, '42 to June, '43 at $5853.40 a year you would get a total of $58,000.00; if you would capitalize the production from September, '40 to September, '42, taking 70 per cent of the total production, it would be $7640.64, and five times that—in other words, that being for two years it would be something like $39,000.00.

I think the jury had a right to take those things into consideration. In other words, they weren't bound by the opinion of the witnesses themselves; they had a right to determine for themselves from

all the evidence what their opinion was. As a matter of fact, the jury in these condemnation matters sits more or less as appraisers after hearing the evidence, and as our Supreme Court said in this recent case that went up from Northern California—all that a jury does in a case where there isn't actual evidence of sales and purchases within the immediate time period is arrive at an informed guess after getting all of the information before it.

The government was taking over a going concern in this particular matter; they were taking over a certain oil and gas leasehold which had a value for its mineral content. They were also taking over certain machinery and equipment that they wanted to use. It is exactly the same, in my opinion, as a mine, for example, a coal mine or gold mine: it has a value by itself for the mineral content; you put on machinery and equipment and it adds to that particular value. It costs you so much to get that machinery and equipment. It is just like a farmer buying tractors and machinery to get the crops; the land or the crop has a certain value, but you have to have the machinery and equipment also.

They wanted a going concern, and all of this equipment three years after it was taken was still being used intact without having been changed, according to Mr. Oliver's testimony.

The government in its own complaint separated these particular items. If you take paragraph 10 of the complaint, what is the government seeking to condemn?

"* * * That the estate or interest in the property hereinafter described which the plaintiff in this action intends and seeks to take, acquire, [36] condemn, hold, and own is: (a) the full fee simple title to the real property hereinafter described, subject, however, to existing easement for public utilities; (b) title to all the personal property and trade fixtures, hereinafter described, free and clear of all liens and encumbrances, located on said real property or on any part thereof, on the 28th day of September, 1942."

And that personal property so described is the inventory served and filed with the complaint.

Now, when Mr. Block was on the stand and testified he was asked about the separate valuation of, first, the leasehold and the equipment and the overriding royalty—incidentally, I assumed from the motion that no complaint is being made as to that part of the verdict, as to overriding royalty, because nothing is raised in the motion.

The Court: No, it hasn't been presented.

Mr. Dechter: In so far as Mr. Block's testimony is concerned, when he was asked the question about the value of the personal property, and I think Mr. Block showed himself to be very well qualified, he testified $22,000.00, and there was no objection——

The Court: $22,500.00, wasn't it?

Mr. Dechter: I am not sure, your Honor.

The Court: Well, it was about that. [37]

Mr. Dechter: And there was no objection made by Mr. Weymann at that time.

The Court: He couldn't very well make an objection to the owner's valuation. I don't think he is to be criticized for that, or that there is to be any inference drawn unfavorable to the government by reason of that.

Mr. Dechter: What I meant, your Honor, was this: That he is specifying as an error the fact that evidence was received of the component parts, and it is a rule of law that evidence even if it is objectionable——

The Court: I beg your pardon. I misunderstood you.

Mr. Dechter: In other words——

The Court: I understand what you mean.

Mr. Dechter: Evidence even if it is objectionable, assuming for the purpose of the argument that he is correct that evidence should not have been received of the component parts, if it goes in at one time without objection, then the courts have held that he cannot raise the point because there is the same evidence in without objection.

The Court: I understand. I had a different idea of what you meant, Mr. Dechter.

Mr. Dechter: The same thing is true of Mr. Rubin; although in Mr. Rubin's case he did make an objection in one part of Mr. Rubin's testimony, but when the question was directly asked Mr. Rubin as to his opinion as to value he [38] failed to make the objection and the answer is made without objection, and it so appears in the record.

On the question of the law of the case, in Peltoaa v. Katahdin Pulp & Paper Co., 149 Fed. 282, n the power and duty of the trial court, it is said: "It is not the duty of the court to set aside a erdict rendered on conflicting evidence, unless it nds that the jury were governed by prejudice, assion, or corrupt motives; and it will not do so n the exercise of its discretion, where it does not ppear that the jury disregarded the instructions r failed to consider any part of the evidence." In case by a District Court——

The Court: I don't think you need go into that art, Mr. Dechter. Any one who has had expeience over some years either as a lawyer or a judge n the bench knows that the granting of a new rial in any case upon the insufficiency of the evilence is a matter within the discretion of the court, nd the exercise of that discretion must be proper.

Mr. Dechter: That is exactly the law, your Honor.

The Court: In other words, when it says that t doesn't mean that the court may without regard o the facts just simply grant a motion for a new rial or deny it because the court has the discretion, ut it is what has been designated as judicial disretion. [39]

I haven't looked at this case that Mr. Weymann as referred to, Murphy v. United States, but from what he states, I am sure that is simply an expresion of the general rule regarding granting new rials.

It was written by Judge Wilbur, I believe Mr. Weymann said.

Mr. Weymann: I beg your pardon, your Honor. Judge Garrecht.

The Court: I was going to say if it was written by Judge Wilbur I am pretty sure it is in accordance with the California rule, which I think is in accord with the general principle regarding granting motions for new trials.

There is a California case, I think it is the case of Green v. Soule in 145 Cal., which I think is an excellent case, setting forth the principles by which a trial court judge should be guided.

One of the cases in the California Reports has gone so far as to say that the parties are entitled to two decisions, two verdicts, when the judge of the court has to decide whether the evidence is sufficient to sustain the verdict of the jury on a motion for a new trial.

This Green v. Soule, I think, is an excellent case.

The case of Hunt v. United Bank & Trust Co. in 210 Cal. is another excellent decision or opinion that was written by Justice Tyler, and in that case he distinguishes between the [40] consideration of a motion for a directed verdict, a motion for judgment non obstante veridicto, and a motion for a new trial, and what is said in all these cases is what Mr. Weymann has stated as the holding in this Murphy case, so I don't think you need take the time to go into that.

What I am afraid of is that the court has taken

more time in its statement than you would have taken probably.

Mr. Dechter: I am glad to hear that, your Honor. That confirms what I would be saying, anyway.

The thought occurs to me that Mr. Weymann in his argument talked about depreciation. Depreciation usually is a bookkeeping entry. Mr. Owens on the stand testified that he had taken out casing and tubing that had been in wells for 10 and 15 years and had resold them for the current second-hand market value, which had an O.P.A. price of something, according to the testimony, 15 or 20 per cent less than new, and used it in oil wells. So, in other words, it is not unusual for equipment to be used in oil wells for a long period of time and still have a usable value in oil wells.

Now, upon the matter of fact of expert opinion, it is not conclusive——

The Court: I think we are all agreed upon the law. I think when we were going over the instruction that was offered on that point, the one that was given, you and Mr. Weymann and the judge of the court were all in accord. [41]

Mr. Dechter: That is correct, your Honor. I had a number of California cases, but I won't read them.

There is a nice remark made by Randolph Paul in his book Studies on Federal Taxation. Your Honor will remember he was the Treasury tax counsel for a long time. He says:

"It is a weary task to find fair market value.

The result is not academic. It expresses itself in money deficiencies. Valuation is neither crystal gazing nor geometry, but a serious hard business with economic and social implications of vast significance. One must look in many directions at the same time, invoke a host of details, and yet avoid a microscopic attitude."

That language together with a recent Federal Court decision in 30 Fed. Sup. 425: It is not sufficient ground for a new trial that the verdict is merely against a preponderance of the testimony, or that the court might have arrived at a different result, but the verdict must be manifestly and palpably against the evidence in the case.

On the matter of the separation of the component parts which I think the government itself raised in this case by its own issues in the complaint and by its own witnesses' testimony, I want to call the court's attention to the City of Oakland v. Schench in 197 Cal. 456 at page 461.

"If, prior to the institution of the condemnation [42] proceedings, the railroad companies had constructed upon the land embraced within the crossing buildings to be used in their business, it would have been necessary, in ascertaining the just compensation to be awarded, to take into consideration the value of such improvements. There were no buildings in the present case. The inquiry is directed solely to the question of the diminution, if any, in value of the railroad right-of-way."

There there was an easement involved; here there is a profit a prendre involved.

Concerning the fact that derricks and tubing and rods are always treated separately, I think the court can take judicial notice of the fact that our our own taxing authorities always separate the mining rights as one classification and the derrick and tubing and rods as personal property in a separate classification, showing what the practice is in the oil industry in California, and that is illustrated by the case of the County of Ventura v. Barry in 207 Cal. 189 at 192, where the court says:

" * * * The operations of lessees under oil leases contemplates the erection of derricks and other structures of an impermanent character and the sinking of deep wells at large expense, but which derive their main value from the expenditure [43] necessary to their creation but from the oil content of the land into which they penetrate."

Incidentally, the Klinker case that Mr. Weymann relied on so much, and which was distinguished in that case that came down——

The Court: Was that the Indiana case?

Mr. Dechter: The Klinker case in the Times Building case, a California case, and your Honor will recall that Mr. Weymann made much ado about the fact that in that case the heavy printing presses were treated as part of the real estate of the Times Building; and then that case came down while we were at trial from San Diego, those bank vault cases, which distinguished——

The Court: That is the one I called to your attention?

Mr. Dechter: That is right, and the one we se-

cured a copy of. A close reading of the Klinker case will show that a distinction is made between fixtures as trade fixtures and improvements. In other words, where fixtures by the intent of the owner become permanent parts of the real estate, they become improvements and therefore are treated as part of the real estate; but where there is an intent that they shall be removable, they don't become improvements and they remain personal property or trade fixtures. And in the Klinker case it is said:

"When fixtures become part of the realty, if [44] the land on which the building stands is taken in whole or in part for the public use, the owner is entitled to have the fixtures considered in determining the amount of his compensation."

This is the Klinker case itself. Then it goes on to say at page 209:

"It is, of course, true that the manner in which the fixtures are annexed, the purpose for which the premises are used, and the intention of the persons who made the annexation, are all to receive weight in settling this issue. It is also true that the intention of the parties, where mutual rights are involved, is of controlling importance, such as in the case of a lessor and lessee, or vendor and vendee under a conditional sales contract. But where, as here, the owner's own conduct alone is to be reviewed, the nature and adaptability of the machinery and the manner of its installation would practically control the question of intent as against a vendor or a condemnor. Here we have not only the

manner of annexation of the fixtures and the purpose for which the premises were used, but we have the acts and conduct of the owner in installing these fixtures and, when viewed as a whole, we are unable to escape the conclusion [45] that so much of the fixtures as are denoted in the record by the term 'processing equipment' are, actually or constructively, an improvement of the real property." Then at page 211:

"Neither is appellant in a position to question the ruling of the court in allowing the so-called structural value of the building to be shown by it, and, after so doing, limiting its purpose to corroboration of the evidence of market value and the formation of a basis for hypothetical questions to be propounded to experts upon the question of market value. The general rule is against the admission of this class of evidence for any purpose. The market value of the land, together with the improvements thereon, viewed as a whole and not separately, is the general rule. * * * Exceptions to this general rule might be allowed where, under peculiar circumstances not here present, as by reason of the nature of the improvement itself, no other criterion would be appropriate for establishing the market value of the property other than the structural value or the reconstruction cost. The case of Joint Highway Dist. No. 9 v. Ocean Shore R. Co. (128 Cal. App. 743) seems to be an illustration of the [46] exception."

In that particular case the court said at pages 759 and 760:

"Appellant further states that the market value 'cannot be based on cost of reproduction, plus appreciation, less depreciation.' There is some conflict of authority on the question of the admissibility of evidence to show such cost of reproduction, but we believe that when it appears that property is improved so as to make it peculiarly adaptable for its highest available use and there may be said to be a market for the property for such use, the cost of reproduction of such improvements becomes a factor in the determination of market value and to that extent the opinions of the witnesses may 'be based on' such cost. This does not mean, however, that such cost of reproduction is the market value of the land, for other factors, including demand, enter into the ultimate determination of market value." At page 765:

"We may refer to the testimony of the witness Butler, who considered the cost of reproduction but arrived at a market value far below such cost of reproduction. It was entirely proper under the [47] circumstances for said witness to give consideration to such cost as a factor in determining market value." At pages 766 and 767:

"We may further state that much of the alleged objectionable testimony of these witnesses had to do with the strategic location of the land and the nature of the improvements thereon, tending to show its availability for transportation purposes. Under the circumstances in the present case we believe that such testimony was proper on direct examination. We have found no authority presenting

facts on all fours with those before us, but the facts found in North Shore R. Co. v. Pennsylvania Co., 251 Penn. 445, are somewhat similar. The decision in that case supports the view that testimony of the character referred to is admissible. Appellant insists that such testimony was inadmissible, but this argument, like many others advanced by appellant in the briefs, is based upon the premise that there was no market for the property for transportation purposes. This argument falls, for, as pointed out above, there was sufficient evidence to establish the marketability of the land for such purposes." In other words, even in the case of improvement there is [48] an exception to the rule where improvements may be separately valued. Here we have a case which does not involve improvements in the legal sense of the word, but involves personal property which can be moved off —which the general custom is may be removed. Then there are other cases from other states:

Evidence of value of timber or of minerals or of anything on or in the land which would make it more valuable is admissible. Citing cases from Kentucky, Minnesota, New Mexico and New York, the New York case being 234 N. Y. 208.

Where land is improved and the improvements had an intrinsic value which must be added to the land in order to ascertain the market value as a whole, evidence of the separate value of the improvements is admissible. Citing cases from Ohio, Rhode Island and Texas, the Texas case being 126 Texas, 604, State v. Carpenter.

In the New York case of In re Waterfront, 219 New York Sup. 353, the court says:

"Where improvements on land taken by eminent domain have an intrinsic value which must be added to the value of the land in order to ascertain the value of the whole of the land and the value of such improvements may be considered separately and then added together."

On the matter of excessive damages, I have set forth [49] the general rule by numerous cases, and I feel embarrassed to even mention it. I know your Honor is familiar with that rule, that unless the verdict just shocks the conscience and is unquestionably influenced by passion, prejudice, corruption, or wilful disregard, that that is not a ground for a new trial. There are just numerous cases on that score.

In short, your Honor, I believe that the case was fairly tried, the jury was properly instructed, and as I said before if we eliminated all of the defendant's testimony there would still be sufficient testimony in the record to support the jury's verdict.

Mr. Weymann: May I reply briefly?

With all due respects to Mr. Dechter, it does seem to me that discussion of real property or personal property really confuses the issue, and I may myself have unintentionally contributed to that confusion. After all, what we are considering here is the compensation for property taken. The question of the relation between landlord and tenant, lessor and lessee, vendor and vendee, as to the rights of

the removed property have no place in this proceeding, to my mind.

It is true that equipment on an oil well is not a permanent fixture; it is true that it may be removed. We don't contest that. What we object to is not the valuation of that equipment when we are through using it, but the valuation now separately and apart from the lease to which it [50] gives value. That any value of that equipment apart from the lease cannot be realized until the lease is abandoned, without destroying the value of the lease.

Reverting again to my illustration of this automobile, this hypothetical automobile. Of course, the engine of itself has a value. You can take it out of the automobile and sell it. But then you won't have an automobile to be valued.

When we are through using it, the engine also has a value; the body, the coach may have some value—nominal, and the engine may be resold. But you can't sell the engine and get a market value for it without destroying the value of the automobile.

That is the long and short of it from our point of view.

Reference was made to our pleadings. Necessarily we had to specify personal property in order to comply with the California rules on property. If we had condemned only real property the question could be raised very properly, and has been raised in some instances, that there was no authority to take equipment. But that does not go to the ques-

tion as to whether or not this equipment is an integral part of an oil lease, which constitutes an oil lease and without the use of which there is no valuation, no value for the lease except as potential oil land, and then to determine the value of that potential oil land it is necessary to determine how much it is [51] going to cost to equip that lease with the necessary machinery to get the product from it.

Now, counsel cited a New York case, the Waterfront case, as to separate valuation of land and the buildings thereon. You can still use the land even though you take the building off and never put a building on, because naked land has a market value apart from the buildings. The buildings add to the value of it. But you can't value a hotel property as a hotel property when you take the buildings off the land. You have got wreckage, you have got used building material, and you have got a vacant lot when you separate them. So it is with an oil well.

We concede that some value may be recovered for this equipment, but it cannot be recovered until the possibilities of the lease have been exhausted. You can't have both at the same time.

Reference was made to the court deciding that they should both be valued together by the jury. Well, the instruction doesn't bear out counsel's argument, because the court said: You are to determine such value on the basis of the use of the facilities and equipment as an integral and necessary

part of said well in the production of oil therefrom.

I think that correctly states the situation that there is no value to an oil lease without that equipment, and therefore that separate valuation results inevitably in a double [52] compensation.

Counsel again said the government was taking over a going concern this morning in his argument. A going concern is not potential oil land; a going concern isn't oil well equipment. If there weren't any oil wells the equipment wouldn't have any value except as junk. If there wasn't any equipment the potential oil lands wouldn't have any value except as bare land.

The Court: Read that last statement, please.

(The record was read.)

The Court: You didn't quite mean that, did you?

Mr. Weymann: If there were no wells on which the equipment could be used, it certainly wouldn't have any value as oil well equipment, that is what I meant.

The Court: Suppose you had the oil well equipment there and no oil well, it would still be oil well equipment and could be valued as such.

Mr. Weymann: In other words, the possibility of the use of that for the purpose for which it was designed must exist. Perhaps I don't make myself clear. In other words, if all the oil throughout this entire country, all of the fields were exhausted, there would be no use for equipment. In other

Court are too reluctant to exercise their power of granting a new trial for insufficiency of the evidence, and too much inclined to acquiesce in a verdict of the jury which does not meet with their own approval. There is a clear and obvious distinction between the duty of a trial court and the duty of an appellate court with respect to the decision of such questions, and it is well established by the decisions of this court. The trial court cannot rest upon a conflict in the evidence, but must weigh and consider the evidence for both parties, and determine for itself the just conclusion to be drawn from it. 'Where the decision is against the weight of the evidence it is the duty of that court to grant a new trial.' (Giving some citations.) 'If the judge is not satisfied with the verdict, and is convinced that it is clearly against the weight of the evidence, it is his duty to set it aside, even though there may have been some conflict in the testimony. He has had the same opportunity as the jury to observe the manner of the witnesses, and to decide upon their credibility, and it is his duty [56] to see that the verdict is not clearly against the weight of the evidence. He just exercise a wholesome and discreet supervision over the jury in this respect.' "

And there is some more along that line, but I shall not read it.

The judge states in the opinion:

"He must be clearly satisfied that the verdict is wrong; otherwise, he should let it stand. But in considering the question upon the motion he must act upon his own judgment as to the effect

of the evidence. The parties are entitled to the judgment of the jury in rendering a verdict, in the first instance; but upon a motion for a new trial they are equally entitled to the independent judgment of the judge as to whether such verdict is supported by the evidence."

I read quite a little from that decision, but it seems to me that it is all very proper in consideration of a motion for a new trial.

Hunt v. United Bank and Trust Company is at page 108 in 210 Cal.

Mr. Weymann: What was that citation again, if the court please?

The Court: Hunt v. United Bank and Trust Company, 210 [57] Cal. beginning at page 108.

I think, considering all of the evidence, that the court would not be justified in setting aside the verdict of the jury, so the motion is denied.

I may say that I believe Mr. Dechter has properly referred to the action of the court in regard to the difference in the two dates, that is, September 28, 1942, and October, 1943. I was led to believe by a statement—I have forgotten who made it—at the pre-trial conference that there would be a considerable difference in the valuation of the personal property between those two dates. You have that in mind?

Mr. Dechter: That is correct, your Honor, I have that impression.

The Court: But as the evidence developed from a number of the witnesses I was convinced that there was no difference. I think the jury could not

have been confused upon that point. In any event, the court stated its views and the motion is denied.

Mr. Dechter: Notice waived, Mr. Weymann?

Mr. Weymann: Notice waived.

The Court: I don't believe our rule has been tested yet. I think your construction of it is probably correct, but the court didn't desire to decide the very important point on that. [58]

Mr. Dechter: It is the same way in the Superior Court, the judges always want to hear it on the merits.

Mr. Weymann: I thought I specifically specified that objection, because to carry it out in detail would be simply to review the evidence.

The Court: Well, court is now recessed. [59]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 20th day of October, A.D. 1945.

/s/ SAMUEL GOLDSTEIN,
Official Reporter.

[Endorsed]: Filed Mar. 22, 1946.

[Endorsed]: No. 11282. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, for the use of Reconstruction Finance Corporation, a Federal Corporation, acting in behalf of Defense Plant Corporation, a Federal Corporation, Appellant, vs. Sam Block, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 25, 1946.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11282

UNITED STATES OF AMERICA, for the Use of RECONSTRUCTION FINANCE CORPORATION, a Federal Corporation, Acting in Behalf of DEFENSE PLANT CORPORATION, a Federal Corporation,

Plaintiff-Appellant,

vs.

CERTAIN PARCELS OF LAND IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA; SAM BLOCK, et al.,

Defendants.

SAM BLOCK,

Defendant-Appellee.

STATEMENT OF POINTS AND DESIGNATION OF RECORD

To the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, and to Dechter, Hoyt, Pines & Walsh, Attorneys for Sam Block, Appellee.

In accordance with the provisions of Rule 19, Subdivision 6, (C.C.A. 9), the appellant, United States of America, files this, its Statement of Points and Designation of Record on Appeal from the

Judgment entered September 17, 1945, in favor of the defendant Sam Block:

1. Appellant adopts on this appeal the Statement of Points on Appeal filed with the Clerk of the trial court, as incorporated in the Record on Appeal;

2. Appellant desires to have printed the entire record, subject to deletions and modifications as set forth in the written stipulation between appellant and appellee which is included in the record, as certified by the trial court.

Dated: This 25th day of March, 1946.

EUGENE D. WILLIAMS,
Special Ass't. to the Attorney General.

By /s/ A. WEYMANN,
Attorney for Appellant,
United States of America.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed March 27, 1946. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPLICATION FOR CONSIDERATION OF ORIGINAL EXHIBITS AND ORDER DISPENSING WITH PRINTING.

Appellant, United States of America, hereby applies to this Honorable Court for the considera-

tion of plaintiff's original Exhibits No. 6 and No. 9, heretofore forwarded to the Clerk of this Court, pursuant to Rule 75(i), F.R.C.P., on this appeal, and for an order dispensing with the reproduction or printing of these exhibits in the record on appeal.

This application is based on the affidavit of August Weymann, verified the 27th day of March, 1946, and the stipulation of the attorneys for appellee, both hereto annexed.

Dated: This 27th day of March, 1946.

/s/ EUGENE D. WILLIAMS,

Special Assistant to the Attorney General, Attorney for Plaintiff-Appellant.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION FOR CONSIDERATION OF ORIGINAL EXHIBITS, AND DISPENSING WITH PRINTING.

It Is Hereby Stipulated and Agreed, by the attorneys for the appellee, Sam Block, that the appellant, United States of America, may apply to the Court for an order dispensing with the reproduction or printing of plaintiff's Exhibits No. 6 and No. 9, and that the Court may consider the original of said exhibits as though set out in the printed record.

Dated: This 27th day of March, 1946.

DECHTER, HOYT, PINES & WALSH,

By /s/ B. S. HOYT,

Attorneys for Appellee, Sam Block.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT IN SUPPORT OF APPLICATION FOR CONSIDERATION OF ORIGINAL EXHIBITS ON APPEAL.

State of California,
County of Los Angeles—ss.

August Weymann, being first duly sworn, says:

That he is a Special Attorney in the Lands Division, Department of Justice, having immediate charge of the proceeding in which the above appeal is taken, and is familiar with the facts herein set forth;

That Plaintiff's Exhibit 6 is a large map of the area included in the condemnation proceeding in which this appeal is taken, showing the subdivided area on which the various oil leases, including that of the appellee, Block, were located; that said map is approximately 48 x 54 inches, and shows in detail the various parcels of land and leasehold estates in the area; that by reason of the size of this map it is not practicable to have it reduced for printing

in the record so as to make it legible; and that, further, the major portion of the area shown on the map is not involved in this appeal.

That Plaintiff's Exhibit 9 is a construction graph showing a decline of production from the subject well, which was used and introduced for illustrative purposes only, and that only the original of this graph is in existence; that it was made large enough for the jury to see from a blackboard; that in order to reproduce it for printing in the record it would have to be reduced to such an extent as to make it practically illegible.

Therefore, appellant prays an order of the Court for the consideration of the originals of the above said exhibits on this appeal and expresses will be unwilling to reproduce thereof in the printed record on appeal.

A. WETMANN.

Subscribed and sworn to before me, this 17th day of March, 1926.

[Seal] ABE H. McLAY,
Notary Public in and for Said County and State.

My Commission Expires: 11-27-29.

[Title of Circuit Court of Appeals and Cause.]

ORDER DISPENSING WITH THE REPRODUCTION OR PRINTING OF EXHIBITS AND PROVIDING FOR THE CONSIDERATION OF THE ORIGINALS.

Upon application of appellant, United States of America, the stipulation of appellee, Sam Block, and the affidavit of August Weymann, verified the 27th day of March, 1946, and good cause appearing therefor.

It Is Ordered, that Plaintiff's Exhibits 6 and 9 may be omitted from the printed record in the above-entitled appeal, and that the said exhibits may be considered by the Court in their original form as though set out in the printed record.

Dated: This 28th day of March, 1946.

/s/ ALBERT LEE STEPHENS,
Judge, United States Circuit Court of Appeals.

[Endorsed]: Filed March 29, 1946. Paul P. O'Brien, Clerk.